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The American
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THE PARIS COVENANT FOR A LEAGUE OF NATIONS[1]

WILLIAM HOWARD TAFT

Ex-President of the United States

We are here to-night in sight of a league of peace, of what I have ever regarded as the "Promised Land." Such a war as the last is a hideous blot on our Christian civilization. The inconsistency is as foul as was slavery under the Declaration of Independence. If Christian nations cannot now be brought into a united effort to suppress a recurrence of such a contest it will be a shame to modern society.

During my administration I attempted to secure treaties of universal arbitration between this country and France and England, by which all issues depending for their settlement upon legal principles were to be submitted to an international court for final decision. These treaties were emasculated by the senate, yielding to the spirit which proceeds, unconsciously doubtless, but truly, from the conviction that the only thing that will secure to a nation the justice it wishes to secure is force; that agreements between nations to settle controversies justly and peaceably should never be given any weight in national policy; that in dealing between civilized nations we must assume that each nation is conspiring to deprive us of our independence and

[1] Address delivered at the Metropolitan Opera House New York, March 4, 1919.

our prosperity; that there is no impartial tribunal to which we can entrust the decision of any question vitally affecting our interests or our honor, and that we can afford to make no agreement from which we may not immediately withdraw, and whose temporary operation to our detriment may not be expressly a ground for ending it. This is the doctrine of despair. It leads necessarily to the conclusion that our only recourse to avoid war is competitive armament, with its dreadful burdens and its constant temptation to the war it seeks to avoid.

LIMITATION OF ARMAMENTS

The first important covenant with reference to peace and war in the constitution of the league is that looking to a reduction of armament by all nations. The executive council, consisting of representatives of the United States, the British Empire, France, Italy, Japan, and of four other nations to be selected by the body of delegates, is to consider how much the armaments of the nations should be reduced, having regard to the safety of each of the nations and their obligations under the league. Having reached a conclusion as to the proportionate limits of each nation's armament, it submits its conclusion to each nation, which may or may not agree to the limit thus recommended; but when an agreement is reached it covenants to keep within that limit until, by application to the executive council, the limit may be raised. In other words, each nation agrees to its own limitation. Having so agreed, it must keep within it.

The importance of providing for a reduction of armament every one recognizes. It is affirmed in the newly proposed senate resolution. Can we not trust our Congress to fix a limitation safe for the country and to stick to it? If we can't, no country can. Yet all the rest are anxious to do this and they are far more exposed than we.

The character of this obligation is affected by the time during which the covenants of the league remain binding. There is no stipulation as to how long this is. In my judgment there should be a period of ten years or a permission for any member of the league to withdraw from the covenant by giving a reasonable notice of one or two years of its intention to do so.

PEACEFUL SETTLEMENT

The members of the league and the nonmembers are required, the former by their covenant, the latter by an enforced obligation, to submit all differences between them not capable of being settled by negotiation to arbitration before a tribunal composed as the parties may agree. They are required to covenant to abide the award. Should either party deem the question one not proper for arbitration then it is to be taken up by the executive council of the league. The executive council mediates between the parties and secures a voluntary settlement of the question if possible; if it fails, it makes a report. If the report is unanimous, the executive council is to recommend what shall be done to carry into effect its recommendation. If there is a dissenting vote, then the majority report is published, and the minority report, if desired, and no further action is taken. If either party or the executive council itself desires, the mediating function is to be discharged by the body of delegates in which every member of the league has one vote. There is no direction as to what shall be done with reference to the recommendation of proper measures to be taken, and the whole matter is then left for such further action as the members of the league agree upon. There is no covenant by the defeated party that it will comply with the unanimous report of the executive council or the body of the league.

And right here I wish to take up the objection made to the league that under this machinery we might be compelled to receive immigrants contrary to our national desire from Japan or China. We could and would refuse to submit the issue to arbitration. It would then go to mediation. In my judgment the council as a mediating body should not take jurisdiction to consider such a difference. Immigration by international law is a domestic question completely within the control of the government into which immigration is sought, unless the question of immigration is the subject of treaty stipulation between two countries. If, however, it be said that there is no limitation in the covenant of the differences to be mediated, clearly we would

run no risk of receiving from the large body of delegates of all the members of the league a unanimous report recommending a settlement by which Japanese immigrants shall be admitted to our shores or Japanese applicants be admitted to our citizenship, contrary to our protest. But were it made, we are under no covenant to obey such recommendation. If it could be imagined that all of the other nations of the world would thus unite their military forces to compel us to receive Japanese immigrants under the covenant, why would they not do so without the covenant?

These articles compelling submission of differences either to arbitration or mediation are not complete machinery for settlement by peaceable means of all issues arising between nations. But they are a substantial step forward. They are an unambitious plan to settle as many questions as possible by arbitration or mediation. They illustrate the spirit of those who drafted this covenant and their sensible desire not to attempt more till after actual experience.

COVENANT IN RESTRAINT OF WAR

The next covenant is that the nations shall not begin war until three months after the arbitration award or the recommendation of compromise, and not then if the defendant nation against whom the award or recommendation has been made shall comply with it. This is the great restraint of war imposed by the covenant upon members of the league and nonmembers. It is said that this would prevent our resistance to a border raid of Mexico or self-defense against any invasion. This is a most extreme construction. If a nation refuses submission at all, as it does when it begins an attack, the nation attacked is released instanter from its obligation to submit and is restored to the complete power of self-defense. Had this objection not been raised in the senate one would not have deemed it necessary to answer so unwarranted a suggestion.

If the defendant nation does not comply with the award or unanimous report, then the plaintiff nation can begin war and

carry out such complete remedy as the circumstances enable it to do. But if the defendant nation does comply with the award or unanimous report, then the plaintiff nation must be content with such compliance. It runs the risk of not getting all that it thought it ought to have or might have by war, but as it is asking affirmative relief it must be seeking some less vital interest than its political independence or territorial integrity, and the limitation is not one which can be dangerous to its sovereignty.

The third covenant, the penalizing covenant, is that if a nation begins war, in violation of its covenant, then *ipso facto* that is an act of war against every member of the league and the members of the league are required definitely and distinctly to levy a boycott on the covenant-breaking nation and to cut off from it all commercial, trade, financial, personal and official relations between them and their citizens and it and its citizens. Indeed, the boycott is compound or secondary in that it is directed against any nonmembers of the league continuing to deal with the outlaw nation. This is an obligation operative at once on each member of the league. With us the executive council would report the violation of the covenant to the President and that would be reported to Congress, and Congress would then, by reason of the covenant of the league, be under an honorable legal and moral obligation to levy an embargo and prevent all intercourse of every kind between this nation and the covenant-breaking nation.

The extent of this penalty and its heavy withering effect when the hostile action includes all members of the league, as well as all nonmembers, may be easily appreciated. The prospect of such an isolation would be likely to frighten any member of the league from a reckless violation of its covenant to begin war. It is inconceivable that any small nation, dependent as it must be on larger nations for its trade and sustenance, indeed for its food and raw material, would for a moment court such a destructive ostracism as this would be.

Other covenants of the penalizing article impose on the members of the league the duty of sharing the expense of a boycott with any nation upon which it has fallen with uneven weight

and of supporting such a nation in its resistance to any special measures directed against it by the outlaw nation. But there is no specific requirement as to the character of the support beyond the obligation of the boycott, the contribution of expenses and the obligation of each member of the league to permit the passage through its territory of forces of other members of the league coöperating with military forces against the outlaw nation.

If, however, the boycott does not prove sufficient, then the executive council is to recommend the number of the military and naval forces to be contributed by the members of the league to protect the covenants of the league in such a case. There is no specific covenant by which they agree to furnish any amount of force, or, indeed, any force at all, to a league army. The use of the word "recommend" in describing the function of the executive council shows that the question whether such forces shall be contributed and what shall be their amount must ultimately address itself to the members of the league for their decision and action. There is this radical and important difference, therefore, between the obligation to lay a boycott and the obligation to furnish military force, and doubtless this distinction was insisted upon and reached by a compromise. The term "recommendation" cannot be interpreted to impose any imperative obligation on those to whom the recommendation is directed.

INDEPENDENCE OF LEAGUE MEMBERS

By Article X, the high contracting parties undertake to respect and preserve against external aggression the political independence and the territorial integrity of every member of the league, and when these are attacked or threatened the executive council is to advise as to the proper means to fulfill this obligation. The same acts or series of acts which make Article X applicable will be a breach of the covenant which creates an outlaw nation under Article XVI, so that all nations must begin a boycott against any nation thus breaking the territorial integrity or overthrowing the independence of a member of the

league. Indeed Article X will usually not be applicable until a war shall be fought to the point showing its specific purpose. Protection against it will usually be necessary in preventing, in a treaty of peace, the appropriation of territory or the interference with the sovereignty of the attacked and defeated nation. We have seen this in the construction of the Monroe Doctrine put upon it by Secretary Seward and President Roosevelt. The former, when Spain attacked Chili and Chili appealed to the United States to protect it, advised Spain that under the policy of the United States it would not interfere to prevent the punishment by war of an American nation by a non-American nation, provided it did not extend to a permanent deprivation of its territory or an overthrow of its sovereignty. President Roosevelt, in the Venezuelan matter, also announced that the Monroe Doctrine did not prevent nations from proceeding by force to collect their debts provided oppressive measures were not used which would deprive the nation of its independence or territorial integrity. This furnishes an analogy for the proper construction of Article X.

The fact that the executive council is to advise what means shall be taken to fulfill the obligation shows that they are to be such as each nation shall deem proper and fair under the circumstances, considering its remoteness from the country and the fact that the nearer presence of other nations should induce them to furnish the requisite military force. It thus seems to me clear that the question, both under Article XVIII, and under Article X, as to whether the United States shall declare war and what forces it shall furnish, are remitted to the voluntary action of the Congress of the United States under the Constitution, having regard for a fair division between all the nations of the burden to be borne under the league and the proper means to be adopted, whether by the enjoined and inevitable boycott alone, or by the advance of loans of money, or by the declaration of war and the use of military force. This is as it should be. It fixes the obligation of action in such a way that American nations will attend to America and European nations will attend to Europe and Asiatic nations to Asia, unless all deem the situation so

threatening to the world and to their own interests that they should take a more active part. It seems to me that appropriate words might be added to the pact which should show distinctly this distribution of obligation. This will relieve those anxious, in respect to the Monroe Doctrine, to exclude European or Asiatic nations from forcible intervention in issues between American nations until requested by the United States or an executive council of the American nations framed for the purpose.

Objection is made that Great Britain might have more delegates in the executive council than other countries. This is an error. The British Empire, which, of course, includes its dominions, is limited to one delegate in the executive council. Provision is made by which upon a vote of two-thirds of the body of delegates new members may be admitted who are independent states or are self-governing dominions or colonies. Under this Canada and Australia and South Africa might be admitted as delegates. I presume, too, the Philippines might be admitted. But the function of the body of delegates is not one which makes its membership of great importance. When it acts as a mediating and compromising body its reports must be unanimous to have any effect. The addition of members therefore is not likely to create greater probability of unanimity. More than this, the large number of countries who will become members will minimize any important British influence from the addition of such dominions and colonies since they are really admitted because they have different interests from their mother country. The suggestion that Great Britain will have any greater power than other member nations in shaping the policy of the league in really critical matters, when analyzed, will be seen to have no foundation whatever.

PROPOSED SENATE RESOLUTION

A proposed resolution in the senate recites that the constitution of the League of Nations in the form now proposed should not be accepted by the United States, although the sense of the senate is that the nations of the world should unite to promote

peace and general disarmament. The resolution further recites that the negotiations on the part of the United States should immediately be directed to the utmost expedition of the urgent business of negotiating peace terms with Germany satisfactory to the United States and the nations with whom the United States is associated in the war against the German government, and that the proposal for a League of Nations to insure the permanent peace of the world should then be taken up for careful and serious consideration. It is said that this resolution will be supported by thirty-seven members of the new senate, and thus defeat the confirmation of any treaty which includes the present proposed covenant of Paris.

The President of the United States is the authority under the federal Constitution which initiates the form of treaties and which at the outset determines what subject matter they shall include. Therefore, if it shall seem to the President of the United States and to those acting with him with similar authority for other nations that a treaty of peace cannot be concluded except with a covenant providing for a League of Nations, in substance like that now proposed, as a condition precedent to the proper operation and effectiveness of the treaty itself, it will be the duty of the President and his fellow delegates to the conference to insert such a covenant in the treaty. If accordingly such a covenant shall be incorporated in a treaty of peace, signed by the representatives of the powers and shall be brought back by the President and submitted by him to the senate, the question which will address itself to the proponents of this senate resolution will be not whether they would prefer to consider a League of Nations after the treaty of peace but whether they will feel justified in defeating or postponing a treaty because it contains a constitution of a League of Nations deemed by the President necessary to the kind of peace which all seek.

PLAN OF TREATY

The covenant of Paris, which is now a covenant only between the nations at war with Germany, including the seven nations who actually won the war, is essential to an effective treaty of

peace to accomplish the purposes of the war; for the purposes of the war were to defeat militarism, to make the world safe for democracy and to secure permanent peace.

Under the informal agreement between the nations who won this war, outlined in the President's message of January 8, 1918, as qualified by the Entente Allies before the armistice, we are to create and recognize as independent states four nations forming a bulwark between Germany and Russia to prevent future intrigues by Germany to secure control of Russia. In the process we are to carve these new nations out of the great autocracies, Russia, Germany and Austria. We are to give German and Austrian Poland to the republic of Poland, to set up the Czechoslovak state of ten million inhabitants between Germany and Austria-Hungary, as well as the Jugoslav state carved out of Austria and Hungary in the south. We are to fix new boundaries in the Balkans, with Rumania enlarged by Transylvania and Bessarabia, and to make an internationalized government at Constantinople, keeping ward over the passage between the Black Sea and the Aegean, and to establish autonomous dominions in Palestine, Syria, Armenia and Mesopotamia. This plan for the peace and the reasons for it were set out with great force and vision by Senator Lodge in a speech last January. The chief purpose of the plan is to take away the possibility that Germany shall ever again conceive and carry toward accomplishment her dream of the control of Russia and of a Middle European and Asiatic Empire, reaching from Hamburg to the Persian Gulf.

The plan thus requires not only the establishment but the continued maintenance of seven new republics in Europe and several autonomies in Asia Minor. We are to create twenty nations instead of four; and we are to carve the new ones out of the old ones. The peoples of the new republics will not have had experience in self-government. They are the children of the League of Nations, as Cuba has been our child. The league must continue to be a guardian of their internal stability, if they are to serve their purpose. Their natural resentment for past oppression against the neighboring countries out of which they have been

carved and the corresponding hatred of them by the defeated peoples of those countries will at once produce controversies innumerable over the interpretation of the treaty and its application. Even the new countries as between themselves, with their natural lack of self-restraint and their indefinite ideas of their powers, have already come into forced conflict.

Unless there be some means for authoritatively interpreting the treaty and applying it, and unless the power of the league be behind it to give effect to such interpretation and application, the treaty instead of producing peace will produce a state of continued war.

More than this, in the dark background is the threatening specter of Bolshevism, hard, cruel, murderous, uncompromising, destructive of Christian civilization, militant in pressing its hideous doctrines upon other peoples and insidious in its propaganda among the lowest element in every country. Against the chaos and the explosive dangers of Bolshevism, throughout all the countries of Europe, a League of Nations must be established to settle controversies peaceably and to enforce the settlement.

LEAGUE WITHOUT UNITED STATES FUTILE

If it be said that the European nations should unite in a league to maintain these independent states and settle the difficulties arising between them and the older states in the sphere of war, as well as to resist Bolshevism, it is sufficient to say that the withdrawal of the United States from the League of Nations will weaken it immeasurably. The disinterestedness of the United States, its position as the greatest power in the world in view of its people and their intelligence and adaptability, its enormous natural resources, and its potential military power, demonstrated on the fields of France and Belgium, make its membership in the league indispensable. The confidence of the world in its disinterestedness and in its pure democracy will enormously enhance the prestige and power of the league's earnest desire for peace with justice.

For the United States to withdraw would make a league of the other nations nothing but a return to the system of alliances and the balance of power with a certain speedy recurrence of war, in which the United States would be as certainly involved as it was in this war. The new inventions for the destruction of men and peoples would finally result in world suicide, while in the interval there would be a story of progressive competition in armaments, with all their heavy burdens upon the peoples of the nations, already oppressed almost to the point of exhaustion. With such a prospect and to avoid such results the United States should not hesitate to take its place with the other responsible nations of the world and make the light concessions and assume the light burdens involved in membership in the league.

No critic of the league has offered a single constructive suggestion to meet the crisis that I have thus summarily touched upon. The resolution of the senate does not suggest or refer in any way to machinery by which the function of the League of Nations in steadying Europe and the maintaining of the peace agreed upon in the peace treaty shall be secured. Well may the President, therefore, decline to comply with the suggestions of the proposed resolution. Well may he say when he returns with the treaty, of which the covenant shall be a most important and indispensable part, "If you would postpone peace, if you would defeat it, you can refuse to ratify the treaty. Amend it by striking out the covenant and you will leave confusion worse confounded, with the objects of the war unattained and sacrificed and Europe and the world in dangerous chaos."

Objection is made that the covenant of the league is a departure from the traditional policy of the United States following the advice of Washington in avoiding entangling alliances with European nations. The European war into which we were drawn demonstrates that the policy is no longer possible for the United States. It has ceased to be a struggling nation. It has been made a close neighbor of Great Britain and France and Italy and of all the nations of Europe, and is in such intimate trade relations that in a general European war it never can be a neutral again. It tried to be in this war and failed. Whatever nation

secures the control of the seas will make the United States its ally, no matter how formal and careful its neutrality, because it will be the sole customer of the United States in food, raw material and war necessities. Modern war is carried on in the mines and the workshops and on the farm, as well as in the trenches. The former are indispensable to the work in the latter. Hence the United States will certainly be drawn in, and hence its interests are inevitably involved in the preservation of European peace. These conditions and circumstances are so different from those in Washington's day and are so unlike anything which he could have anticipated that no words of his having relation to selfish offensive and defensive alliances such as he described in favor of one nation and against another should be given any application to the present international status.

THE MONROE DOCTRINE

Objection is made that the covenant destroys the Monroe Doctrine. The Monroe Doctrine was announced and adopted to keep European monarchies from overthrowing the independence of and fastening their system upon governments in this hemisphere. It has been asserted in various forms, some of them extreme, and others less so. I presume that no one now would attempt to sustain the declarations of Secretary Olney in his correspondence with Lord Salisbury. But all will probably agree that the sum and substance of the Monroe Doctrine is that we do not propose in our own interest to allow European nations or Asiatic nations to acquire, beyond what they now have, through war or purchase or intrigue, territory, political power or strategical opportunity from the countries of this hemisphere. Article X of the constitution of the league is intended to secure this to all signatory nations, except that it does not forbid purchase of territory or power.

In some speeches in the senate intimations have been made which enlarge the Monroe Doctrine beyond what can be justified. Those who would seek to enforce a doctrine which would make the western hemisphere our own preserve, in which we may impose

our sovereign will on other countries in what we suppose to be their own interest, because, indeed, we have done that in the past, should not be sustained. Our conquests of western territory, of course, have worked greatly for the civilization of the world and for our own usefulness and the happiness of those who now occupy that territory; but we have reached a state in the world's history when its progress should be now determined and secured under just and peaceful conditions, and progress through conquest by powerful nations should be prevented.

To suppose that the conditions in America and in Europe can be maintained absolutely separate, with the great trade relations between North America and Europe, is to look backward, not forward. It does not face existing conditions.

The European nations desire our entrance into this league not that they may control America but to secure our aid in controlling Europe, and I venture to think that they would be relieved if the primary duty of keeping peace and policing this western hemisphere were relegated to us and our western colleagues. I object, however, to such a reservation as was contained in the Hague Conference against entangling alliances, because the recommendation was framed before this war and contained provisions as to the so-called policy against entangling alliances that are inconsistent with the present needs of this nation and of the rest of the world if a peaceful future is to be secured to both. I would favor, however, a recognition of the Monroe Doctrine as I have stated it above by specific words in the covenant, and with a further provision that the settlement of purely American questions should be remitted primarily to the American nations, with machinery like that of the present league, and that European nations should not intervene unless requested to do so by the American nations.

CONSTITUTIONAL OBJECTIONS

Objection is made to this league on constitutional grounds. This league is to be made by the treaty-making power of the United States. What does the treaty-making power cover?

The Supreme Court of the United States, through Mr. Justice Field, in the Riggs case has held that it covers the right to deal by contract with all subject matters which are usually dealt with by contract in treaties between nations, except it cannot be used to change our form of government or to part with territory of a state without its consent. The Supreme Court has over and over again, through Mr. Chief Justice Marshall, indicated that the United States was a nation and a sovereign capable of dealing with other nations as such, and with all the powers inferable from such sovereignty. It is said, however, that the league will change the form of our government. But no function or discretion is taken from any branch of the government which it now performs or exercises. It is asserted that the covenant delegates to an outside tribunal, viz., the executive council, the power vested by the Constitution in Congress or the senate. But the executive council has no power but to recommend to the nations of the league courses which those nations may accept or reject, save in the matter of increasing the limit of armament, to which the United States by its Congress, after full consideration, shall have consented. Neither the executive council nor the body of delegates in the machinery for the peaceful settling of differences does other than to recommend a compromise which the United States does not under the league covenant to obey. In all other respects these bodies are mere instruments for conference by representatives for devising plans which are submitted to the various governments of the league for their voluntary acceptance and adoption. No obligation of the United States under the league is fixed by action of either the executive council or the body of delegates.

Then it is said we have no right to agree to levy an embargo and a boycott. It is true that Congress determines what our commercial relations shall be with other countries of the world. It is true that if a boycott is to be levied Congress must levy it in the form of an embargo, as that which was levied by Congress in Jefferson's administration, and the validity of which was sustained by the Supreme Court, with John Marshall at its head. It is true that Congress might repudiate the obligation

entered into by the treaty-making power and refuse to levy such an embargo. But none of these facts would invalidate or render unconstitutional a treaty by which the obligation of the United States was assumed.

In other words, the essence of sovereign power is that while the sovereign may make a contract it retains the power to repudiate it, if it chooses to dishonor its promises. That does not render null the original obligation or discredit its binding moral force. The nations of Europe are willing to accept, as we must be willing to accept from them, mutual promises, the one in consideration of the other, in confidence that neither will refuse to comply with such promises honorably entered into.

Finally, it is objected that we have no right to agree to arbitrate issues. It is said that we might by arbitration lose our territorial integrity or our political independence. This is a stretch of imagination by the distinguished senator who made it at which we marvel. In the face of Article X, which is an undertaking to respect the territorial integrity and political independence of every member of the league, how could a board of arbitration possibly reach such a result? More than that, we do not have to arbitrate. If we do not care to arbitrate, we can throw the matter into mediation and conciliation, and we do not covenant to obey the recommendation of compromise by the conciliating body. We have been arbitrating questions for one hundred years.

We have stipulated in treaties to arbitrate classes of questions long before the questions arise. How would we arbitrate under this treaty? The form of the issue to be arbitrated would have to be formulated by our treaty-making power—the President and the senate of the United States. The award would have to be performed by that branch of the government which executes awards, generally the Congress of the United States. If it involved payment of money, Congress would have to appropriate it. If it involved limitation of armament, Congress would have to limit it. If it involved any duty within the legislative power of Congress under the Constitution, Congress would have to perform it. If Congress sees fit to comply with the report of the

compromise by the conciliating body, Congress will have to make such compliance.

The covenant takes away the sovereignty of the United States only as any contract curtails the freedom of action of an individual which he has voluntarily surrendered for the purpose of the contract and to obtain the benefit of it. The covenant creates no super-sovereignty. It merely creates contract obligations. It binds nations to stand together to secure compliance with those obligations. That is all. This is no different from a contract that we make with one nation. If we enter into an important contract with another nation to pay money or to do other things of vital interest to that nation and we break it, then we expose ourselves to the just effort of that nation by force of arms to attempt to compel us to comply with our obligations. This covenant of all the nations is only a limited and loose union of the compelling powers of many nations to do the same thing. The assertion that we are giving up our sovereignty carries us logically and necessarily to the absurd result that we cannot make a contract to do anything with another nation because it limits our freedom of action as a sovereign.

Sovereignty is freedom of action of nations. It is exactly analogous to the liberty of the individual regulated by law. The sovereignty that we should insist upon and the only sovereignty we have a right to insist upon is a sovereignty regulated by international law, international morality and international justice, a sovereignty enjoying the sacred rights which sovereignties of other nations may enjoy, a sovereignty consistent with the enjoyment of the same sovereignty of other nations. It is a sovereignty limited by the law of nations and limited by the obligation of contracts fully and freely entered into in respect to matters which are usually the subjects of contracts between nations.

The President is now returning to Europe. As the representative of this nation in the conference he has joined in recommending in this proposed covenant a League of Nations for consideration and adoption by the conference. He has meantime

returned home to discharge other executive duties and it has given him an opportunity to note a discussion of the league in the senate of the United States and elsewhere. Some speeches, notably that of Senator Lodge, have been useful in taking up the league, article by article, criticising its language and expressing doubts either as to its meaning or as to its wisdom.

He will differ, as many others will differ, from Senator Lodge in respect to many of the criticisms, but he will find many useful suggestions in the constructive part of the speech which he will be able to present to his colleagues in the conference. They will be especially valuable in revising the form of the covenant and making reservations to which his colleagues in the conference may readily consent, where Senator Lodge or the other critics have misunderstood the purpose and meaning of the words used.

This covenant should be in the treaty of peace. It is indispensable in ending the war, if the war is to accomplish the declared purpose of this nation and the world in that war, and if it is to work the promised benefit to mankind. We know the President believes this and will insist upon it. Our profound sympathy in his purpose and our prayers for his success should go with him in his great mission.

ORGANIZATION AND PROCEDURE OF THE PEACE CONFERENCE

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The difficulty of threading one's way through the intricacies of the organization of the Peace Conference is due chiefly to the fact that the conference is from one point of view a continuation of various interallied conferences and councils created for the prosecution of the war. In some cases the functions of these bodies have apparently been taken over by the conference, and in other cases the preëxisting councils and commissions have continued in operation as interallied agencies distinct from the organization of the conference. A brief review of the most important of these agencies will be of assistance, therefore, in making clear the origin and special functions of the conference.

The Supreme War Council was created by an agreement between Great Britain, France and Italy at a meeting held at Rapallo, Italy, in the first week of November, 1917. It was composed of the prime ministers and a member of the governments of each of the great powers fighting on the western front. Its purpose was to watch over the general conduct of the war and prepare recommendations for the decision of the governments. It was to be assisted by a permanent central military committee, consisting of Generals Foch, Wilson and Cadorna, but the decisions of these technical advisers were merely to be the basis of recommendations from the War Council to the several governments, leaving the general staffs and military commands of each power responsible to their individual governments. The United States subsequently adhered to the Rapallo agreement, and participated in the meeting of the council at Versailles on December 1, 1917. This Supreme War Council is variously referred to as the "Interallied Coun-

cil," the "Interallied Committee," and the "Supreme Allied Council." It was primarily a political body, and the prime ministers were accompanied by members of their governments in addition to the military advisers.

Distinct from the Supreme War Council, but connected with and guided by it, was the Interallied Conference which came into being after the arrival in Europe of a special mission from the United States. The object of this "war conference," as announced by the department of state, was the perfecting of "a more complete coördination of the activities of the various nations engaged in the conflict and a more comprehensive understanding of their respective needs" for the better prosecution of the war against Germany. The members of the American mission represented political, financial, trade, shipping and food interests. The first meeting of the conference was on November 29, 1917, at the Quai d'Orsay, and it included delegates from the United States, Great Britain, France, Italy, Japan, Russia, Belgium, Serbia, Rumania, and eight other of the smaller belligerents. The conference, working in coöperation with the Supreme War Council, created a number of subcouncils and commissions, among them being the interallied naval council, the allied maritime transport council, with its subordinate food and munition councils, the interallied council on war purchases and finance, and the allied blockade committee. On October 30, 1918, the Supreme War Council met to fix the terms of the armistices with Austria-Hungary, Turkey and Germany, and by admitting representatives from Japan, Belgium, Serbia and other belligerents soon developed into an interallied conference. The decisions reached during the following ten days were announced at one time in the name of the Supreme War Council and again in the name of "the allied governments."

A body known as the "Interallied Council," differing, it would appear, only in name and in the absence of military advisers from the Supreme War Council, met on January 12, 1919, after the return of President Wilson from Italy, to deal with the problem of adopting regulations for the coming Peace Conference. At its first session it consisted of representatives

of the United States, Great Britain, France, and Italy, but the following day representatives of Japan were present. This exclusive group of the larger powers issued daily official communications announcing decisions respecting the proposed organization of the conference, its procedure, and the publicity to be given to its proceedings. The decision regarding publicity was the result of a sharp attack by the representatives of the press in Paris upon the character of the *communiqués* already issued by the council. The council explained that, owing to the conflicting views of the powers upon many questions and the necessity of reaching conclusions by unanimous vote, the decisions reached were often in the nature of a compromise, and that premature discussion of the issues by the public at large would greatly hinder such agreement. In consequence it was found impossible to admit the representatives of the press into the meetings of the council and of the committees of the conference, but they would be admitted into the meetings of the full conference except upon occasions when it might be necessary to hold them in camera.

The Peace Conference held its first meeting on January 18, at the Quai d'Orsay. After an introductory address by the President of the French Republic, the French Premier, as temporary chairman, introduced President Wilson, who in turn moved that the honor of the position of permanent president should fall to the French Premier. An address of acceptance by M. Clemenceau followed, after which he officially summoned the delegates of the nations represented to present documents dealing with the special claims of their particular nation. The first session of the conference then adjourned.

The organization of the conference and the procedure to be followed by it are laid down in the "Conference Regulations" drawn up by the Interallied Council (Supreme Allied Council) and published in part in the daily *communiqués* of the council and in full on January 21. They are grouped under sixteen sections: sections I to III dealing with the membership of the conference and the representation to be accorded to the several members, sections IV to VIII dealing with the organization of

the conference, and sections X to XVI dealing with the procedure to be followed in the presentation and adoption of proposals.

The nations admitted to the conference are grouped by section I into three classes: "The belligerent powers with general interests," including the United States, the British Empire, France, Italy and Japan, which shall take part in all the meetings and be represented upon all the commissions; secondly, "the belligerent powers with particular (special) interests," including Belgium, Brazil, the British Dominions and India, China, Cuba, Greece, Guatemala, Haiti, Hedjaz, Honduras, Liberia, Nicaragua, Panama, Poland, Portugal, Rumania, Serbia, Siam, and the Czechoslovak Republic, which shall take part in the sittings at which questions concerning them are discussed; thirdly, "the powers in a state of diplomatic rupture with the enemy powers," including Bolivia, Ecuador, Peru, and Uruguay, which shall take part in the sittings at which questions concerning them are discussed. Provision is also made for the admission of neutral powers and of states in process of formation, when summoned by the powers with general interests at sittings devoted to questions concerning such states.

Section II apportions the delegates among the powers classified in section I. Five delegates each are assigned to the powers with general interests; three each to Belgium, Brazil, and Serbia; two each to China, Greece, Hedjaz, Poland, Portugal, Rumania, Siam, and the Czechoslovak Republic; one each to Cuba, Guatemala, Haiti, Honduras, Liberia, Nicaragua, and Panama; and one each to Bolivia, Ecuador, Peru, and Uruguay. Belgium and Serbia were at first assigned but two delegates each, but the dissatisfaction expressed upon the announcement of this decision of the council on January 15 resulted in a decision at the meeting on January 17 to increase the delegates of the two countries to three each. Nine additional delegates are distributed among the British Dominions and India—two each to Australia, Canada, South Africa, and India, and one to New Zealand. Owing to the uncertainty of the political situation in Montenegro the designation of the delegate assigned to that state is for the time delayed. In like manner the rep-

resentation of Russia is delayed until matters concerning Russia are to be examined.

By a decision of the Interallied Council on January 15 it was agreed that each delegation should be a unit, so that the number of delegates forming it should have no influence upon its status at the conference; and it was also agreed that each nation might avail itself of the panel system, which would enable the state at discretion to intrust its interests to such persons as it might designate, and would in particular enable the British Empire to admit among its five delegates other representatives of the Dominions and of India than those provided for.

It will be observed that in respect to the membership of the conference and the apportionment of delegates among the members the Peace Conference of 1919 departs in a striking way from the precedents of former conferences and congresses. The congresses of Vienna in 1815, of Paris in 1856, of Berlin in 1878, and of Berlin in 1885 were gatherings of a limited group of the great powers with the admission of too few of the lesser powers (Portugal, Spain, and Sweden being present at Vienna, and Sardinia and Turkey at Paris) to make it necessary to draw formal distinctions between the members. Representatives of Greece, Rumania and Persia were permitted to present their views to the Congress of Berlin, but took no part in the deliberations of the congress. The two important international conferences held at the Hague in 1899 and 1907, while they were not, it is true, conferences of belligerents, likewise made no formal distinction between the members great and small, although, as will be seen, the great powers were able to make their influence felt through their dominant position upon the committees. The theory of the equality of the states was in the foreground at every stage of the public proceedings of the Hague conferences, but this was possible without involving serious difficulties because of the fact that no such pressing and vital interests were at stake as those now before the Paris conference.

In pursuance of the privileged position conferred upon them by section 1 the five "powers with general interests" created

the "Supreme Council," consisting of the two ranking members of each delegation and differing from the Supreme Allied Council, which created the conference, only in name and in the fact that it operates under the rules of the conference. This body is sometimes referred to as the "Council of Ten." According to press reports all the important decisions have been reached at its special meetings and the conference has merely been called upon to ratify the results reached. In consequence, considerable dissatisfaction has been expressed by the liberal and radical press of Great Britain and the United States, criticism being directed not against the principle of giving greater influence to the delegations of the great powers but against the entire exclusion of the lesser powers. Whether or not a representative conference based upon the principle of the apportionment of delegates according to contribution of each nation to the winning of the war would have given greater satisfaction or would have permitted an equal expedition of the business before the conference cannot be decided on abstract principles, and it may well be urged that the imperative character of the business to be settled and the wide variety in the character and claims of the minor belligerents precluded the experiment of creating an assembly based upon proportional representation.

At the meeting of the Supreme Council on January 20 the French Ambassador to Russia and the Danish Minister in Petrograd addressed the meeting and explained the situation in Russia as they had recently observed it. On January 23 the council issued an important statement that it recognized without reservation the revolution in Russia and would under no circumstances aid or give countenance to any attempt at a counter revolution. Accordingly it invited the various organized groups exercising political authority or military control in European Russia and Siberia to send representatives to the Princes' Islands in the Sea of Marmora to meet representatives of the associated powers, provided that in the meantime a truce of arms be agreed upon between the various parties, and that Russian troops operating against territories formerly part of

Russia upon which it was contemplated to confer autonomy be withdrawn.

On January 23 the council drew up a list of questions to be submitted to the conference at its next plenary session. On January 24 the Supreme Council met as the Supreme War Council to decide, with the assistance of military representatives, what should be the quota of troops to be assigned along the western border during the armistice. This question being referred to a committee, the War Council adjourned and the council met to draw up a communication warning the new nations whose boundary lines remained yet undetermined that any attempt on their part to enforce their claims against their neighbors by a resort to arms would only prejudice those claims in the eyes of the conference as casting a cloud upon the evidence of a just title.

A second plenary session of the conference was held on January 25 and was marked by the creation of the important committees for the detailed work of the conference. The first item on the agenda was a resolution calling for the creation of a league of nations. The resolution asserted that it was essential to the maintenance of the settlement which the conference had met to establish that a league of nations be created "to promote international obligations and to provide safeguards against war;" also that the league "should be created as an integral part of the general treaty of peace." At the same time a committee was appointed to work out the details of the constitution and functions of the league. After the formal introduction of this resolution the Chair recognized President Wilson who made an address outlining the principles of the league and urging its adoption. Premier Lloyd George seconded the resolution, and after further addresses in support of it from delegates of other countries the resolution was unanimously adopted. The conference then proceeded to adopt resolutions creating four other commissions dealing with responsibility for the war and for violations of the laws of war, with conditions of labor and the possible international regulation of them, with international control of ports, waterways, and railways, and with the amount and form of

reparation to be made by the enemy. These commissions, with the exception of that on reparation, were to be composed of two representatives apiece from the five great powers and five representatives to be elected by the other powers. The commission on reparation was to comprise three representatives apiece from each of the five great powers and two representatives apiece from Belgium, Greece, Poland, Rumania and Serbia.

The announcement of the method of appointing the commissions was the signal for an outburst of criticism from the nineteen smaller powers which were obliged to pool their interests in the hands of five representatives on four of the commissions. Other small powers resented their being omitted altogether from the commission on reparation. In spite of the attacks made upon it, however, the original method of appointing the commissions was retained; and on January 27, following a meeting of the powers with "special" ("particular") interests, their formal acquiescence in the plan was announced. Belgium was elected to sit upon each of the commissions, and Serbia upon all except the commission on labor conditions. At its special request China was elected to the commission on the League of Nations. A separate session of the council of the great powers held on the same day provided for two new commissions to deal with economic and financial questions and with questions relating to private and maritime laws.

Accompanying the criticism by the smaller powers of the composition of the commissions was an attack upon the exclusive control exercised by the Supreme Council, which up to that time had passed upon all questions before they were taken up in the plenary sessions. After January 25 the Supreme Council of the five great powers was replaced by the "bureau," consisting of M. Clemenceau as president of the conference, and Secretary Lansing and the prime ministers of Great Britain, Italy, and Japan, as vice-presidents; but the official composition of the bureau did not prevent its sittings from being attended by the same persons who formerly composed the Supreme Council. To meet the criticism directed against its exclusive composition it was agreed by the great powers that the smaller powers were to

have full access to the records of the bureau and were to be present in the room when the bureau should meet to discuss their special interests. In this way the smaller states would be informed of the issues raised before conclusions were reached and before the decisions of the bureau were submitted to the plenary sessions.

On March 27 the press announced the creation of an informal council of the leading delegates of the United States, Great Britain, France, and Italy, subsequently known as the Council of Four (the "Big Four"), the purpose of which was to expedite still further the business of the Conference. It was explained that the Council of Ten, with its secretariat, expert advisers and other attaches, numbering in all about forty members, had become too cumbersome and that the discussions of the members bore too much of the character of set speeches prepared for the records. The Council of Four has met alone and unattended, although they summon experts when the need requires. The deliberations are secret. The Council of Ten still continued, however, to register the decisions of the Council of Four.

By contrast with the composition of the council and of the commissions as above outlined it may be of interest to note in passing the procedure followed at the Congress of Berlin in 1878 and at the second Hague Peace Conference of 1907. The Congress of Berlin, being limited to a small group of six great powers and Turkey, did not find it necessary to apportion its work among committees, but followed the rule of reserving for the plenary sessions of the congress the discussion of "questions of principle," while secondary questions were for the most part left to private interviews between the states particularly interested. As a matter of fact, however, the important questions were discussed and solved beforehand in preliminary conferences or confidential *pourparlers*, and when presented to the congress were accepted without question by the minor plenipotentiaries, though this amounted merely to the neglect of the particular delegates, not their states. One important boundary committee was created, charged with formulating the difficult boundaries of the Balkan states, and this was in turn assisted by military commissions in

whose hands the more technical questions of strategic boundaries rested.

A striking feature of the Congress of Berlin was that three of the members, France, Italy and Germany, were less directly interested in the problems before the congress than were Austria, Great Britain and Russia, so that it was possible for the former to play the part of "neutral" powers whose "impartial voice" might be raised when questions of secondary importance appeared to be threatening "the pacific object of the congress." Turkey, a vitally interested member, was allowed to look on while its affairs were for the most part settled for it by others. At three different sessions representatives of Greece, Rumania and Persia were allowed to appear and present the views of their governments; but they were obliged to retire without taking part in the deliberations. Serbia and Montenegro, whose independence was at stake, were not even shown that privilege.

At the second Hague Peace Conference of 1907 an entirely different procedure was followed. The questions before the conference covered a wide variety of subjects, but none of them were of such vital importance to the individual members as are most of the questions before the present conference at Paris. In consequence not only did the conference of 1907 not divide up into powers with general interests and powers with special interests, but it was able to preserve formally the utmost freedom in the composition of its committees. The *Reglement* governing the organization and procedure of the conference provided (Article II) that the delegates of the powers were "free to register on the lists" of the commissions according to their own convenience and might appoint technical delegates to take part in them. The conference reserved the right to appoint the president and vice-presidents of each commission, but each commission was at liberty to divide itself into subcommissions, which might organize their own officers or "bureau."

This freedom possessed by the delegates to register their names upon the commissions did not imply, however, a direct control over the commissions, owing to the fact that the chairman of the conference, M. Nelidow, understood by the provision

that "the conference shall appoint the president and vice-presidents of each commission," not that the conference as a body should elect those officers, but that the president of the conference should designate the appointees and the conference give its approval without nominations from the floor. In turn the presidents or chairmen of the four commissions controlled the subdivisions of the commissions which undertook the study of separate questions; and thus, while the smaller states could be members of all the commissions and of the subcommissions, they could be denied control over the proceedings and could be left off the committees of examination where much of the detailed work was done. It was in this way that the conference succeeded in reconciling the principle of the legal equality of the states as a body with the actual preponderant control of the leading powers.

The committee system of the conference of 1907 proved, however, to be the chief cause of its inability to reach results on certain important proposals. A rule was adopted that no convention should be recommended for adoption by the conference unless there was unanimity in the commission in favor of it. When it is recalled that the commissions and subcommissions averaged about ninety members, although the delegations of the states voted as a unit, it will be realized how easy it was for some of the smaller states to block a given proposal. In the case of the proposal for compulsory arbitration of a limited class of disputes, the opposition of seven states under the leadership of Germany and Austria-Hungary prevented the commission from presenting a favorable report to the conference, in spite of the fact that the delegations of thirty-two states were in favor of it. The proposal for a judicial arbitration court was defeated by the opposition of the smaller states, which repudiated any scheme for the composition of the court not based upon the equality of sovereign states. A rule of "quasi-unanimity" was, it is true, followed in some instances, but it consisted in the abstention from voting of the power or powers opposed to the resolution when presented for the unanimous vote of the commission or of the plenary session, and was therefore quite distinct from direct majority control.

Sections X to XVI of the regulations of the present conference deal with the procedure to be followed in the formulation, presentation and adoption of proposals. Documents intended for inclusion in the protocols must be presented in writing by one of the plenipotentiaries or by someone acting in his name; but proposals not connected with the question on the agenda may not be introduced without notice given twenty-four hours in advance. Petitions and documents coming from other sources will be received and classified by the secretariat and deposited among the archives of the conference. Such of these communications as are merely political will be briefly summarized and distributed among the plenipotentiaries. All questions presented for decision will be read a first and second time, the first reading opening up the general subject for a discussion of the principles involved, the second reading offering opportunity for an examination of details. Preliminary agreements in the form of protocols are to be drawn up by the secretariat and printed and distributed in proof to the delegates. For the sake of expediting the work of the conference the distribution of these protocols in advance of the meeting is to take the place of the formal reading of the protocols, and if no alteration is proposed the text shall be considered as approved. A drafting committee, composed of representatives of the five great powers outside the circle of their delegates, is created to draw up the text of the decisions adopted and to present them to the conference.

Section VII provides for a secretariat (to be appointed after the method of the drafting committee), which will be intrusted with the duty of drafting the protocols of the meetings, of classifying the archives, and of providing for the general administration and organization of the conference. The archives in charge of the secretariat are to be open at all times to members of the conference. Section VIII provides that the publicity of the proceedings of the conference is to be secured by the publication of official *communiqués* prepared by the secretariat, and that in case of disagreement as to the drafting of these *communiqués* the matter shall be referred to the delegates of the leading powers. It may be inferred from section VI which

creates a permanent president of the conference and four vice-presidents, to be chosen from the plenipotentiaries of the great powers, that the secretariat will remain not under the control of the conference (even if its composition would permit such control), but under the direct control of the Supreme Council.

No provision is made in the regulations with regard to the method of voting in the plenary sessions of the conference, but it may be inferred from the general character of the conference that a unanimous decision must be reached on all questions. The results reached by the conference will be embodied in the form of a treaty which can be binding only upon those nations which have given their individual consent to it. But the legal right of the smaller states to reject the decisions reached by the Supreme Council of the five great powers will obviously have to be subordinated to the practical exigencies of the situation, which will require concerted action by the entire group.

At the second Hague Peace Conference it was possible for states which dissented from certain details of the conclusions reached by the great body not to interpose a veto, which the strict theory of legal sovereignty might have justified, but to sign the convention subject to reservations setting forth the particular article or clause from which they withheld their assent. Thus, in the case of the convention for the pacific settlement of international disputes the United States signed under reservation of a declaration to the effect that nothing contained in the convention should be so construed as to require the United States to depart from its traditional policy of not interfering in the political affairs of foreign states, or as to imply a relinquishment by the United States of its traditional attitude towards purely American questions. But the Hague conventions were after all but legislative enactments superseding the customary rules of international law, so that the failure of a particular state to sign a given convention, or its signature of the convention under reservations, had merely the effect of leaving the state subject to the existing law.

The conference at Paris is dealing with two distinct sets of questions: those relating to the settlement of problems imme-

diately connected with the war, and those relating to the reconstruction of international relations. The committees on responsibility for the war and on reparation, as well as the Supreme War Council which continues to sit from time to time, have in hand the first set of questions, and in respect to these it is clearly imperative that a unanimous decision be reached. On the other hand the committees on a league of nations, on international labor legislation, and on the regulation of ports, waterways and railways, as well as those on economic and financial questions and on private and maritime laws, are engaged in the formulation of substantive rules which approximate to the subject matter of the Hague Conventions. To what extent the decisions reached by these committees will be linked up with the actual treaty of peace it is impossible at this moment to determine; but it would appear that at least the convention providing for a league of nations will be an integral part of the peace treaty and essential to the justice and validity of its terms. To a lesser extent it would also appear that even minor issues such as the regulation of ports, waterways and railways, will figure as a condition in the assignment to a particular state of territory which under the present condition of things might have been assigned for strategic reasons to a different state.

POLITICAL PARTIES AND THE WAR[1]

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The pathology of political parties is illustrated under especially illuminating circumstances during time of war. The internal political conditions of every important nation are influenced to some extent by its external relations. War on a world-wide scale is the external relation which has the most profound influence upon the internal political conditions of every participating nation. This influence varies in different cases, depending upon the proximity of the particular nation to the scene of the conflict, the extent of its participation, the relative danger of invasion by its enemies, the character of the internal governmental organization, the length of the conflict, and other factors. In normal times, it has been found by experience in nations operating under the two-party system that oscillations in the fortunes of the two principal parties occur with a surprising degree of regularity. This see-saw of party politics may have an injurious effect upon the continuity and constructiveness of the nation's foreign policy even in normal times; its continuation in time of war when the nation's fate may be hanging in the balance would be a serious, if not intolerable, danger. One effect of war upon the party system, therefore, is to bring about, at least for a time, a relatively greater stability of party control, if not complete quiescence of partisanship, either through coalition or through cessation of party opposition, or both. In normal times ordinary party opposition to the administration or to the government, as used in the British sense, may be considered not only

[1] This is an expansion of an article with the same title which is to appear in the new edition of the *Encyclopedia Americana*. In the preparation of this article, the author has derived much assistance from J. A. Fairlie's "British War Cabinets," *Michigan Law Review*, Vol. XVI, May, 1918.

as not unpatriotic, but as a positive indication of a healthy and vigorous political life. With the advent of war, however, this view must naturally be subject to considerable modification.

When the first wave of excitement sweeps over the country at the outbreak of war, party struggles and contests may for a time seem to be almost entirely forgotten. The administration will not usually allow the country, if it can be avoided, to be brought to the brink of war unless convinced that the great majority of the people believe the war to be a just one. Under such circumstances, it seldom happens that any party with a considerable following either wishes to or can afford to oppose the entrance of the country into the war. The fortunes of political parties depend to a large extent upon the popularity of the principles which they espouse, as indicated by their platforms and by the character of the men whom they nominate for office. The principles advocated by the political parties are determined in accordance with their respective points of view or reactions toward the leading questions or issues of a public character with which the country is confronted, among which that of war is, of course, one of the most striking and important.

But while there may be practical unanimity upon the question of entering the war, there is more likelihood of a difference developing in the reaction of the parties toward the questions involved in the method of prosecuting it and of terminating it. Upon these questions relating to the war, political parties are likely to take different attitudes and to endeavor to attempt to carry out the policies which they respectively support through securing control of the government and the administration of affairs.

There are difficulties, however, in the assumption by political parties of different attitudes toward questions of war which do not arise to the same extent in connection with their division over questions of domestic policy. The principal issues upon which political parties have divided in the United States, during most of our history, have been those of a domestic or internal character. This has been due largely to our geographical isolation and lack of proximity to powerful or troublesome neighbors.

There has, on the whole, been little attention paid to questions of foreign relations and little popular understanding of such questions; and political parties have consequently, during most of our history, subordinated such questions in their platforms to those of domestic policy. Thus, in time of war, partisan politics becomes comparatively quiescent because the issues upon which parties divide are usually domestic questions; while in war questions of foreign policy and international import become paramount, and these, being new and little understood by the mass of the voters, allow little opportunity for the appearance of decided party cleavage.

At the same time questions of foreign relations which affect our vital interest as intimately as does war cannot well be ignored by the political parties. Upon a question of foreign war, however, there is usually a much greater approach to popular unity and unanimity of public opinion than upon questions of domestic policy. Many persons subscribe to the view that party politics should stop at the water's edge and that, in case of war, it is the duty of every good citizen to support his country, whether right or wrong. It is true that, both in the War of 1812 and in the Mexican War, there was considerable dissatisfaction in certain sections of the country with the war policy of the government, although there was less apparent difference of opinion over these wars than over equally important questions of domestic policy. It may also be noted that the opposition of the Federalist party to the War of 1812 contributed largely to the demise of that party.

Another difficulty in the way of injecting party politics into the conduct of war is, as already intimated, the necessity for continuity of policy and stability of government if the war is to be brought to a successful conclusion. A government's foreign policy, in order to be permanent and constructive, should not be made the plaything of party politics, and this is especially true of war. The see-saw and ups-and-downs of party change which may be the evidences of the healthy fluctuations of public opinion in time of peace become dangerous in time of war. Prompt and decisive action is necessary in the emergency in order to provide for the safety of the state.

For this reason, the party in power during the existence of war usually appeals for the support of the voters in order that a continuous policy and a united front may be presented to the enemy. The reëlection of President Lincoln in 1864 was advocated on the ground that it was unwise "to swap horses while crossing a stream." Appeals were also made to the voters on this ground by leaders and supporters of the party in power in 1898 to elect a Congress composed of a majority of members of that party, although the Spanish-American War was then practically over.

In Great Britain it is possible to postpone a general election by mutual consent during time of war, and thus avoid presenting the voters the opportunity of swapping horses. Under the plan of astronomical government which we have in the United States, however, elections come regularly at stated intervals regardless of whether the country is at war or peace. For this reason, some sort of a party contest even during time of war is practically unavoidable. Moreover, on account of the organization of our national, state, and local governments generally in accordance with the principle of separation of powers, as well as on account of the numerous elections and the large number of elective officers, it is necessary for political parties in the United States to maintain stronger and more permanent organizations than are required in other countries. Although a truce between the parties may be arranged at the outbreak of war, it is likely to be of short duration and to be broken as soon as party exigencies demand it, at the approach of an important election. At such a time the opposition party cannot expect to maintain its organization intact unless it makes a contest to secure control of the offices wherever there is a fair chance of success. Under these circumstances, the necessity apparently rests upon the leaders of the opposition party to find issues and to carry the contest to the polls, in spite of the existence of war and in spite of the fact that a considerable percentage of the rank and file of both parties is enrolled in the armies at the front and unable to participate in the election.

The world war has reacted somewhat differently upon political parties in European parliamentary governments than upon

those in the United States. From one point of view the British cabinet is, in ordinary times, a party committee. It is a body of politicians selected from the leaders of the majority party, rather than a body of nonpartisan technical experts; it is a parliamentary committee holding secret sessions and collectively responsible to the house of commons. At the outbreak of the war it consisted of an unwieldy body of more than twenty members. The war, however, wrought fundamental changes in its character. At the very outset a party truce was agreed to, followed some time afterwards by the creation of a coalition cabinet of about the same number of members, containing practically all the prominent leaders of the two major parties, and one leader of the Labor party, but with a nonpartisan technical expert, Lord Kitchener, in charge of the war office. The formation of the coalition cabinet sealed the party truce, and indicated a significant departure, at least temporarily, from the ordinary plan of party control and responsibility.

Certain other changes also followed in the train of the coalition cabinet. The cabinet ceased to be a mere parliamentary committee and less attention began to be paid to proceedings in Parliament, inasmuch as the latter ceased to affect or control the policies and personnel of the cabinet. The responsibility of the cabinet was rather to the electorate than to the house of commons. In view of the remoteness of a general election, even this responsibility was feeble. That this responsibility, such as it was, had become individual rather than collective was indicated by the resignation in 1917 of the secretary of state for India without affecting the tenure of office of the other members. Under these circumstances, the necessity for holding general elections ceased and acts were passed from time to time postponing the elections by prolonging the duration of the house of commons.

The British coalition cabinet proved unsatisfactory, however, largely because of its unwieldy size; and smaller committees, selected partly from the cabinet and partly from outside, were appointed to supervise particular phases of the administration. One of these committees was the war committee, which subsequently developed into the war cabinet of five members with

Mr. Lloyd George at its head. The war cabinet, however, differed from the war committee in that the latter was a mere committee of, and subordinate to, the large cabinet, while the war cabinet was a small compact group of leaders of the Liberal, Unionist and Labor parties superior to the ministry. For the most part, the members of the war cabinet were not burdened with the duties of administrative office, so that they could devote their whole attention to general matters connected with the war. The war cabinet was a manifest improvement over the cumbrous coalition cabinet, but even the war cabinet lacked the advantages which come from the concentrated power and responsibility of a single controlling head, such as we have in the United States.[2]

The war cabinet under Lloyd George's premiership was, as indicated, a coalition cabinet. Upon the formation of this cabinet, Asquith, the leader of the old-line Liberals, and some of his supporters, retired from office and took seats on the opposition side of the house of commons. This reappearance of an opposition, however, was at first formal rather than real; for the former Liberal premier and his followers, though speaking in opposition to government measures, refrained from voting against them. The party truce still remained in effect. Even at this time it would appear that more dissatisfaction with the government was felt than was openly manifested.

With the further continuation of the war, this dissatisfaction became more open and articulate. This was evidenced in part by the growth of the Sinn Fein movement among the Irish outside of Ulster, who, no longer satisfied with the prospect of home rule, were demanding complete independence. Not only in Ireland, however, but also in England, there was growing dissatisfaction, especially among the members of the Labor party, with the restrictions on individual liberty resulting from the Defense of the Realm Act and other acts.[3] The members of the Labor

[2] A. V. Dicey, in *The Nineteenth Century*, January, 1919.

[3] It is a noteworthy fact that, both in Great Britain and in the United States, the party in power at the outbreak of the war was the party which had stood more strongly against state interference with individual liberty than its principal opponent, but that, in both cases, the successful prosecution of the war necessitated the abandonment of this time-honored policy.

party were also dissatisfied with the expressed war aims of the government both in their international and domestic bearings, with special reference to the position of labor after the war. During the last year of the war, the growing opposition of the Labor party to the government was shown by the action of the local organizations of the party in supporting labor candidates against those of the Coalition at by-elections. In June, 1918, a Labor party conference was held at which a resolution declaring that "the existence of the political truce should be no longer recognized" was adopted by a large majority. Although the adoption of this resolution did not involve the immediate resignation of the Labor members of the government, it was bound in time to render their positions untenable and thus to disrupt the coalition as far as the Labor party was concerned, or else to reduce them to the necessity of breaking away from their party, which some of them ultimately did. The Asquith Liberals could also be counted upon, when opportunity offered, to assume a real opposition to the Coalition.

Promptly after the signing of the armistice in November came the dissolution of Parliament and a general election in December. These important developments came so quickly that the various elements opposing the Coalition did not have time to make their opposition effective at the election. The Lloyd George Coalition received a new lease of power by an overwhelming majority in the commons, though the popular vote was not so striking. Among the causes of this result seem to have been the following: (1) the split in the Labor party, as evidenced by the adherence of some of its prominent leaders to the Coalition; (2) the reaction from the strain of war and the temporary good feeling resulting from the glamor of victory weakened the opposition to the government; (3) the failure on the part of the Asquith Liberals to present to the voters any constructive program on questions of peace conditions and international relations different from those advanced by the Coalition; and (4) the widespread feeling that the problems of reconstruction could be more safely handled by the government which had brought the war to a successful conclusion.

Turning to France, we find that cabinet changes during the war have been more frequent than in Great Britain. Nevertheless some of the same tendencies in the relations of political parties may be observed. Coalition cabinets have been usual in France, on account of the number of parties and the absence of any clear party majority. The cabinet in office at the beginning of the war was reorganized within a few weeks on a broader basis, including representatives of the anti-military Socialists. In October, 1915, a more sweeping reorganization took place, and a new comprehensive cabinet was formed, with M. Briand as president of the council, including six former premiers and a total of twenty-three members, representing all party elements, even the clerical and conservative group. This cabinet was somewhat recast and reduced in December, 1916, and more extensive changes were made in March, 1917, when M. Ribot became premier. In August, 1917, during the Ribot ministry, the Socialists in the chamber of deputies for the first time failed to coöperate with the other party groups in giving the government a vote of confidence. Owing to the weakness of the Socialists, this did not lead immediately to a crisis; but, as criticism continued to develop, Ribot resigned a month later. Following the short-lived Painlevé ministry, which M. Thomas, the Socialist deputy, declined to enter, another cabinet was formed in November, 1917, with M. Clemenceau as premier and composed principally of Radicals and Republicans of the Left, but from which the Independent Socialists as well as the Conservatives and Royalists were omitted, so as to secure a more harmonious group.

Thus, both in Great Britain and in France, the tendency has been at first towards a policy of "comprehension," embracing practically all political parties in the government. But this in turn has been followed by the reappearance of political divisions; and while the government remains a coalition of different elements, distinct opposition parties have been revived.

We may now contrast the developments in the United States with those in Great Britain and France. In November, 1917,

Premier Lloyd George declared that he was almost the only minister in any land on either side who had been in office since the beginning of the war. Practically all the others had fallen by the wayside through one cause or another. This was not true, however, in the United States. A few months after the reëlection of President Wilson in 1916, many votes being undoubtedly cast for him on the ground that he had kept us out of war, he found himself unable longer to preserve peace and at the same time maintain the national honor and self-respect. The entrance of the United States into the war, however, produced no cabinet crisis as it had in England. The same cabinet which had served in time of peace continued to serve without change after a state of war had been declared.

At the same time, active party opposition to the main policies of the administration practically disappeared for a period; while in the conduct of public affairs, many men outside the administration party were called into service, including a number of leading Republicans.

A demand arose from certain leaders and organs of the opposition party that, following the example of Great Britain, a coalition cabinet should be formed, but the demand was unheeded. The opposition to the President's conduct of the war culminated in the attempt to secure the enactment of what was known as the Chamberlain war cabinet bill, providing for the appointment of a war cabinet "of three distinguished citizens of demonstrated executive ability," which should practically take the conduct of the war out of the hands of the President and usurp his constitutional functions as commander-in-chief of the military forces. This bill as proposed would probably have complicated the situation rather than simplified it, and was clearly unconstitutional. Yet it was supported on the ground that such a war cabinet had been established in Great Britain with resulting increased efficiency in war adminstration, and we should consequently profit by her example. Such an argument, however, failed to take into account fundamental differences in the forms of the two governments. The Overman bill, which was finally enacted instead of the Chamberlain bill and gave the Presi-

dent power to coördinate and consolidate the scattered administrative agencies, was much more in harmony with the form and spirit of our institutions. The President neither could be nor ought to be supplanted in the conduct of the war. Stability of policy and administration in time of war is more important than that the personnel of the government should change quickly and readily in accordance with the changing currents of popular opinion and the ebb and flow of partisan politics.

To secure such stability in Great Britain, a coalition cabinet was deemed necessary in order to avoid partisan criticism and struggle which might otherwise cause the downfall of the government through the loss of confidence in it by the house of commons or by the electorate. No such coalition was necessary in the United States, however, since the cabinet officers are not responsible to Congress and are in no danger of an upset so long as they retain the confidence of the President, who is not only the head of the administration but also the leader of his party, and whose tenure of office is, of course, practically secure for the period of his term. The concentrated power and stability of tenure of the President makes for such efficiency in war administration as parliamentary governments are unable to attain except by abandoning the essential principle, that is, ministerial responsibility to Parliament, on which such governments are based. The argument that, because the establishment of the British war cabinet resulted in increased efficiency, such a plan would have the same result in the United States failed to take into account the fact that the establishment of the British war cabinet was a move in the direction of concentration of executive power; while such a cabinet, if introduced in the United States, would be a move in the direction of the diffusion of such power and responsibility.

At the outbreak of war there is an immediate and almost, so to speak, instinctive tendency on the part of the government to become disengaged from those checks and hindrances which, during peace, serve to prevent hasty action and to protect the rights of the individual from the arbitrary power of the government, but which, during war, may seriously interfere with its vigorous

prosecution. This tendency takes the form of a greater concentration and energizing of executive power. Where, as in Great Britain, the governmental organization and the party organization overlap in the cabinet, the tendency in time of war toward greater concentration of governmental power is soon transmitted to the party organizations, resulting in drawing together these organizations into a coalition government. Where, on the other hand, as in the United States, such overlapping of governmental and party organizations in the cabinet does not exist in the same sense, the formation of a coalition administration does not follow as a logical necessity.

Upon the entrance of the United States into the war, a party truce of a somewhat limited character had been tacitly agreed to by the two major parties. The Socialist party alone took a decided stand against the war through the vote of its lone member in Congress and through its St. Louis platform, but the result of this stand was to cause a serious split in the party. In the nature of things, however, the party truce could be only temporary. As the summer of 1918 approached, President Wilson, in calling on the members of Congress to attend to legislation rather than to go home to mend their political fences, made use of his well-known, laconic expression: "Politics is adjourned." Politics, however, was not adjourned *sine die*, but might be reconvened in special session at the first opportunity.

This opportunity came with the approach of the congressional elections of the fall of 1918, which were the only elections of any importance held in the United States during its participation in the war. It is true that even in this election some traces of the party truce remained. In Minnesota the Democrats did not offer any formal opposition to the reëlection of the loyal Republican candidate for United States senator. In New York City an agreement was reached between the leaders of the two major parties, in accordance with which each party indorsed the candidates of the other in three congressional districts. These instances, however, were exceptional and were probably due in part to the belief that the election of the candidates whom it was proposed not to oppose was, in any event, a foregone conclusion.

Party contests occurred generally in states and districts wherever there was a fair chance for the election of either candidate.

The congressional campaign of 1918 attracted on the whole, as was natural, much less public attention than usual. Until a few days before election day, war news crowded political news out of the headlines of the newspapers. Underneath the surface, however, the political pot was simmering. The case of the Democrats, in the eyes of most of the congressional leaders of that party, rested largely on the ground that, under their administration of affairs, the war was being conducted successfully. A huge army had been placed in France—an undertaking more gigantic than the country had ever before attempted, in comparison with which our efforts in the Spanish-American War were mere child's play—and yet there had been less mismanagement, inefficiency and graft than in former wars.

President Wilson's claim for the support of his policies, however, rested on a loftier plane than mere military success or efficient management in the conduct of the war. In March, the President had issued an appeal to New Jersey Democrats in which he struck the keynote of service to humanity as the aim which the party should embrace. "The days of political and economic reconstruction which are ahead of us," declared the President, "no man can now definitely assess, but we know this, that every program must be shot through and through with utter disinterestedness, that no party must try to serve itself, but every party must try to serve humanity. . . . Every program must be tested by this question and this question only: Is it just, is it for the benefit of the average man, without influence or privilege; does it embody in real fact the highest conception of social justice and of right dealing, without respect of person or class or particular interest?" That the politicians of either party were likely to measure up to such a high standard was doubtful.

The President's belief, however, in the possibility of making a distinction between the autocratic German government and the German people was not shared by some of the more prominent leaders of the Republican party, and was also viewed with considerable skepticism by many persons who were not politicians.

Former President Roosevelt went so far as to denounce President Wilson's fourteen points as thoroughly mischievous, and other Republican leaders emphatically disapproved of the President's policy in sending notes to the German government. The Republican leaders indicated their belief that the war was to be won, not through diplomatic appeals to the German people to overthrow their masters, but through the use solely of military force. This was natural, since any victory through diplomatic weapons would redound to the advantage of the administration, while a victory through military force would be more truly the work of the whole nation. They succeeded in making many people believe that the President's policy meant a peace by negotiation and conciliation instead of a peace by dictation and force, and that the Republicans were in advance of the Democrats in demanding the unconditional surrender of Germany.

President Wilson was also handicapped by the fact that there were many prominent members of his own party who were not wholly in sympathy with his policies, and, through the operation of the rule of seniority, some of these men had become chairmen of important congressional committees. He felt, nevertheless, that the Republican leaders were even more out of sympathy with his policies than the large majority of Democrats and that, by their utterances, the former had already broken the party truce. Shortly before the congressional elections, therefore, he issued a public appeal to the voters to return a Democratic majority both to the senate and the house of representatives in order to prevent "division of counsel and leadership" and to avoid the necessity which might otherwise arise of carrying on the government "amid contest and obstruction."

The President's appeal was unusual, but was salutary as bringing about a public discussion of the political aspects of the war which had been partly lost sight of in the midst of important military developments. His main reason for issuing the appeal doubtless was that the possible control by opposite parties of the executive and legislative branches respectively would create an anomalous situation—one likely to lead to difficulties if not deadlock in ordinary times, and one especially to be avoided in a

period of war and of reconstruction after the war when harmony between the executive and the legislative departments becomes even more important and desirable than usual. The election to the legislative body of a majority opposed to the executive would, in parliamentary governments, during ordinary times lead to the resignation of the executive and to the establishment of an executive of opposite political complexion in harmony with the legislature. Such a mode of procedure on the part of the executive, however, is not feasible under the American system of government, for the resignation of the President would, of course, merely place the vice-president in his office with no change of party control over the executive department. Under the circumstances, therefore, if the opposition party gains control of Congress, that party may also attempt to control the President and harmonious relations between the two branches of government become more difficult to maintain. The President is practically reduced to the alternative of refusing to submit to the dictation of Congress, which may produce a deadlock, or of attempting by persuasion and by arousing public opinion through appeals to the country, to compel Congress to carry out his recommendations. The vital importance to the President, therefore, of having a Congress in harmony with administration policies was the principal justification for the President's unusual action.

Such difficulties would have been very much lessened, of course, if it had been clear that the President and his supporters and the members of the opposition, though bearing different party labels, were substantially agreed in their attitude toward the main issues before the country. In that case, the control of the two political branches of the government by different parties would probably have been the nearest approach to coalition government that would be feasible under the existing method of organizing our government into sharply separated departments.

The early and somewhat sudden termination of hostilities through the signing of the armistice was a tribute to the efficacy of the President's diplomatic weapon, the use of which tended to gal-

vanize into life what little there remained of political opposition to the government in Germany. This opposition had been practically buried at the outbreak of the war.[4] The Social Democrats had used fine-sounding words about the international solidarity of labor; but war, in Germany, as elsewhere, is the negation of internationalism. The Social Democrats followed the government into the war, voted for the war credits, and forgot about the solidarity of the working class. The tendency of even the radical opposition party in Germany to support the government at the outbreak of the war was due in part to fear of possible domination of foreign powers, which were believed to harbor imperialistic designs, and in part to the stern repression by the home government of any opposition which it deemed to be unpatriotic. The opposition of the radicals was also stifled in the face of common danger at the outbreak of the war, because the success of the enemy would, in their minds, result in the destruction of their own party organization under the domination of the foreign conqueror.

As the war continued, however, a rift appeared. The majority Socialists, it is true, acquiesced for the most part in the control over the conduct of the war exercised by the military leaders, supported by the Pan-Germans. The minority Socialists, however, protested vigorously against the Brest-Litovsk treaty as a violation of the Reichstag resolution proclaiming the policy of "no annexations, no indemnities;" but their opposition was ineffectual and their own influence declined with the apparent success of the war policy of the military leaders. The significance of President Wilson's policy, after the downfall of the Tsar, in holding out to the Germans a democratic peace program lay in the fact that it tended to strengthen the political opposition in Germany to the Kaiser's government, the imperialistic character of which became more clearly revealed by contrast with the democratic professions of the Allies, under the leadership of Wilson.

[4] Robert Michels, *Political Parties*, p. 393. The chapter of this book on "Political Parties in War Time," though brief, is a philosophical and illuminating discussion of the subject.

In spite of the success of the President's diplomatic policy which, indeed, was not yet perfectly apparent at the date of the congressional elections, his appeal to the voters was not sufficiently efficacious to save his party from defeat. The resulting likelihood that a conflict between the President and Congress would occur was foreshadowed by the passage by the Republican senatorial caucus, shortly after the election, of a resolution declaring that "Congress should assert and exercise its normal and constitutional functions, including legislation necessary for reconstruction." Although whatever wisdom may be contained in Congress should undoubtedly be brought to bear to assist in the solution of the complicated tasks of reconstruction, it should not be brought to bear with that degree of partisan spirit which might be unobjectionable in times of profound peace. The end of the war tends to release some of those springs of thought and action which result in the renewal of party opposition and conflict. It is obvious, however, that the effects of the war have not run their course with the mere cessation of hostilities nor even with the ratification of the definitive treaty of peace. War is a great technical enterprise, and, in the nature of things, there can be no Democratic or Republican way of conducting actual hostilities. Similarly, many of the processes of reconstruction are technical in character and, therefore, although the recrudescence of party politics with the return of peace is to some extent inevitable, the party truce should not be wholly abandoned during the period of reconstruction. This fact received partial recognition in Great Britain through the continuation of the coalition government at the general election. It has also received a partial recognition in the United States in the attitude of some of the leading men of both parties in regarding as a nonpartisan issue the proposal for international reconstruction through a league of nations.

CONSTITUTIONAL LAW IN 1917–1918. II

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1917

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VII. RETROACTIVE CIVIL LEGISLATION

There is little or no homogeneity to the questions to be considered under the head of retroactive legislation. A dispute whether a state has passed a law impairing the obligation of contracts may turn on a question as to the proper interpretation or application of language, or on opposing views of what is sufficient consideration or what agreements are against public policy. It was under the obligation-of-contracts clause that the Pennsylvania Hospital case[72] decided that the power of governmental authorities to exercise eminent domain could not be bargained away. The crucial question is more often whether alleged rights existed than whether undoubted rights have been impaired. The Fourteenth Amendment and the doctrine of vested rights combine to make the obligation-of-contracts clause almost superfluous, as it is difficult to think of any impairment of the obligation of contracts which that clause inhibits which could not equally well be held deprivations of liberty or property without due process of law.

This is apparent from the fact that retroactive legislation by Congress is questioned under the due-process clause of the Fifth Amendment, a contract being regarded as a property right that can be interfered with only when there is sufficient justification for what is done. During the October term, 1917, three cases decided that a congressional change of policy with respect to

[72] Note 69, *supra*.

Indian lands interfered with no vested rights. Egan v. McDonald[73] and Brader v. James[74] held that restrictions on the sale of Indian lands were not contracts and that therefore such restrictions might be later removed. Jefferson v. Fink[75] determined that statutory provisions as to rules of descent for lands allotted to Indians were legislative rather than contractual, and so might be altered as to any land not already passed to the heir by descent from the owner.

As in the preceding triennium, all the objections to retroactive state action were directed against alleged impairment of contracts made by some governmental authority. Aikens v. Kingsbury[76] had to do with a statute relating to the sale of public school lands which provided that the state might foreclose for arrears, but gave the purchaser a right to redeem within twenty days after judgment of foreclosure. This right of redemption was held not to be not part of the contract of sale, but to relate merely to remedies, and therefore constitutionally subject to subsequent modification within limits not transgressed in the case at bar. In Hendrickson v. Apperson,[77] on the other hand, it was declared that the provisions for levying taxes which were in force at the time of the issue of the bonds in suit formed a part of the contract of borrowing, and that the obligation of this contract was impaired by a later law which sought to restrict the power of the tax officials to the substantial disadvantage of the bondholders.

Municipal Securities Corporation v. Kansas City[78] was a suit on certain tax bills assigned to the plaintiff by the contractor who received them in payment for the construction of a sewer. The bills were made liens on abutting private property, and payment for the bills was not to be exacted from the city itself. Nevertheless the plaintiff sued the city on certain bills, basing his right

[73] (1918) 246 U. S. 227.
[74] (1918) 246 U. S. 88.
[75] (1918) 247 U. S. 288.
[76] (1918) 247 U. S. 484.
[77] (1917) 245 U. S. 105. See 31 *Harvard Law Review* 491.
[78] (1918) 247 U. S. 63.

to do so on the fact that the lots on which the bills were liens had been taken by the city in eminent domain proceedings and on the claim that unless the city were liable it would take the plaintiff's property without due process, through its destruction of the lien that insured their payment. The Supreme Court, however, accepted the opinion of the state court that this constitutional question could properly arise only in an action of tort "as for conversion, or destruction, of the property upon which ordinarily the lien of the tax bills would have been fixed," and held that the case was not reviewable since the state court had rested its decision upon a ground of general law adequate to support it, independently of the decision upon the alleged violation of a right claimed under the Fourteenth Amendment. That independent ground was that a suit against the city on the bills themselves was expressly forbidden by the law under which the bills were issued, and that the plaintiff was not the assignee of any other right of action than that upon the bills.

Sears v. Akron,[79] already mentioned in the section on eminent domain, dismissed also a number of objections founded on the obligation-of-contracts clause. The plaintiff complained that the execution of the municipal water project would interfere with rights to construct and operate a power system previously granted to a company in which he was interested, and that for such a taking compensation must be paid. But the court held that the powers conferred by the charter were to be distinguished from property rights acquired in execution of those powers, and that the charter powers included no contract by the state as to what water rights would be available. The grant to the city of power to take the water rights which the company had expected to acquire was also said to be susceptible of being regarded as an exercise of the reserved power to alter or revoke the company's charter, "making its rights subject to those of the city if that is necessary to justify the proceeding of the city, which the Act authorized." The action of the company in adopting a plan of the land it proposed to take and in beginning condemnation

[79] Note 68, *supra*.

proceedings, even if it might under the general laws of the state give a priority as against rivals, was held to confer no rights not subject to revocation under the reserved power over the charter. As to the property rights claimed to have been actually acquired by purchase from prior owners, it was said that the bill failed to show that they would be interfered with by anything that the city proposed to do, and it was held that at any rate the assertion of such rights and of injury thereto were not such as to give cause for the interposition of injunctive relief.

One of the most important problems raised by the obligation-of-contracts clause is the interpretation of silence in statutes granting franchises. Disputes arise frequently over the duration of the franchise where the charter fails to specify how long it is to continue. Two such disputes came before the court during the last term. In Northern Ohio Traction Co. v. Ohio,[80] a majority declined to accept the decision of the state court that the absence of any specification as to the period for which the franchise was granted was to be construed as equivalent to a declaration that it was revocable at will. "It would be against common experience," observed Mr. Justice McReynolds, "to conclude that rational men wittingly invested large sums of money in building a railroad subject to destruction at any moment by mere resolution of county commissioners." This argument Mr. Justice Clarke characterized in the dissenting opinion as "reasoning which it seems is more persuasive with courts than with investors or men of affairs." He pointed out that in a number of states indeterminate franchises are given and received, and added: "This form of franchise has been called 'a tenure during good behaviour,' it has resulted in superior service to the public and, to the surprise of those who reason *a priori* on the subject, such franchises have proved in effect perpetual."

The dissenting opinion seemed to proceed on the assumption that the only two alternatives were that the franchise must be revocable at will or else perpetual. Mr. Justice McReynolds,

[80] (1918) 245 U. S. 574. See 31 *Harvard Law Review* 879. This note also deals most helpfully with Cincinnati v. Cincinnati & Hamilton Traction Co., note 89, *infra*.

however, expressly disclaimed consideration of the question whether the franchise might have expired by a possible twenty-five year limitation contained in the statutes at the time it was granted, since that period had not elapsed at the time of the resolution under consideration. He put to one side, also, the question of the legislature's reserved right to revoke or repeal privileges, since no action had been taken by that body.

In Covington v. South Covington & C. St. Ry. Co.,[81] however, a franchise grant was declared to be perpetual. In reaching this interpretation, chief reliance was placed on the fact that the charter by its terms conveyed all the right and authority that the city had capacity to grant. Mr. Justice Clarke, however, thought that the language conveyed no hint that the franchise was to be perpetual, but was rather "the cautious describing of what the councilmen thought a doubtful remnant of authority, remaining after the grant to the other company which was threatening litigation if a further grant was made, and that they thought it subject to the limitation of twenty-five years in the general ordinance of 1864." This general ordinance was dismissed by the majority on the ground that it did not address itself to the construction or scope of future ordinances.

The interpretation of silence is a difficult literary task, and it is not surprising that, when the judges disagree, neither the majority nor the minority is completely successful in establishing the conclusiveness of its interpretation. It is evident that the opinions in these franchise cases do not fully explain the decisions, and it is probable that competing considerations which are actually weighed and balanced are not set forth in full detail. The cases cannot be stated in terms of doctrine, but must be presented only as instances of adjustments. Nevertheless the decisions of the past few years may be said to indicate rather plainly a disinclination to follow the attitude of some earlier opinions which, as Mr. Justice Clarke reminds his colleagues, declare that a corporation claiming any right in the public streets must show that it has been conferred in plain and express terms, and that "any ambiguity in the terms of the grant must be resolved in

[81] (1918) 246 U. S. 413.

favor of the public and against the corporation 'which can claim nothing which is not clearly given.' "[82] Mr. Justice Clarke was alone in his dissent in the Ohio Traction case, and only Mr. Justice Brandeis joined him in the Covington case.

VIII. IMMUNITIES OF PERSONS CHARGED WITH CRIME

In Burton v. New York Central R. Co.[83] a lady who had been taken from a train by New York police authorities, in the erroneous belief that she was wanted for a crime in Indiana, sued the road for damages claiming that the arrest was illegal and that the road owed her a duty to protect her from illegal arrest. The federal Constitution was brought into the dispute by the plaintiff's claim that the extradition clause guaranteed an immunity from arrest for a crime in another state except after a demand from the executive of the state in which the crime was alleged to have been committed. The Supreme Court held, however, that the federal Constitution and the act of Congress passed to effectuate its provisions have nothing to do with arrest in advance of a requisition, and that whether such an arrest should be made was a matter which each state is at liberty to decide for itself. Since the only federal claim was based on the absence of a requisition, the victim of the unfortunate mistake was denied relief.[84]

[82] But in City of Mitchell v. Dakota Telephone Co., (1918) 246 U. S. 396, holding that a later franchise did not supersede or modify an earlier one, Mr. Justice McKenna said that the conclusions reached "have the support of principles declared by this court that grants of rights and privileges by the state or of any of its municipalities are strictly construed 'and whatever is not unequivocally granted is withheld; nothing passes by mere implication.' " In the Mitchell case it was conceded that a franchise had expired unless it had been extended by a later one. Jurisdiction to determine the effect of the later ordinance on the former one was obtained under the claim raised under the obligation-of-contracts clause. The Supreme Court reversed the district court, holding that it incorrectly decided that the earlier franchise had been superseded and that it incorrectly failed to give effect to a prior judgment between the parties on this question.

[83] (1917) 245 U. S. 315. See 86 *Central Law Journal* 79 and 31 *Harvard Law Review* 650.

[84] See Biddinger v. Commissioner of Police, (1917) 245 U. S. 128, for a decision holding that a person arrested in an asylum state, who conceded that he was in the demanding state at the time the alleged crime was committed, is not entitled

Immunity from unreasonable searches and seizures and from compulsory self-incrimination was the basis of the prayer of the petitioner in Perleman v. United States[85] to restrain a federal district attorney from taking possession of certain papers impounded by a federal court in some civil proceedings. The papers had been voluntarily offered by the petitioner in a patent suit and were in the custody of the court as part of the record in that suit, when upon formal motion they were released for the use of the government in preparing criminal proceedings against Mr. Perleman for alleged perjury. In denying the prayer that the papers be not so used, Mr. Justice McKenna said that in all the cases when seizure of papers had been held to violate the constitutional provisions relied on, "there was force or threats or trespass upon property, some invasion of privacy or governmental extortion." Here the petitioner had voluntarily produced the papers for his own advantage and his objection to their use in criminal proceedings against him was predicated solely on his ownership. But the "criterion of immunity" was said to be "not the ownership of property, but the 'physical or moral compulsion' exerted."

Ruthenberg v. United States,[86] which followed the Selective Draft Law cases in upholding the Selective Service Law and sustained the conviction of Mr. Ruthenberg for inducing, aiding, etc., a certain Mr. Schue to fail to register, rejected also several contentions addressed to the unconstitutionality of the proceedings in which conviction was obtained. The defendant was a Socialist and thought that he ought not to be tried by a jury composed exclusively of members of other parties and of property owners, but the constitutional issue thus raised was said to be settled "by previous adverse rulings upon similar contentions urged by negro defendants indicted and tried by juries composed of white men." Previous decisions, too, were relied on to

to habeas corpus on the ground that the statute of limitations of the demanding state prevented his punishment, as that defense can be asserted only at the trial. See 18 *Columbia Law Review* 70, 2 *Minnesota Law Review* 304, and 27 *Yale Law Journal* 422.

[85] (1918) 247 U. S. 7.

[86] Note 70, *supra*.

dispose of the objection that the court refused to permit defendant's attorney, when examining the jury, to inquire whether they distinguished between socialists and anarchists. The provision of the Sixth Amendment that persons accused of crime should be tried by a jury of the state and district in which the crime was committed was held not to be violated by drawing the jury exclusively from one division of a judicial district. It was also held immaterial that the indictment was found "without a sworn charge previously made."

In Toledo Newspaper Co. v. United States,[87] the constitutional guarantee of freedom of the press was held not to protect a newspaper owner from summary punishment for contempt of court on account of editorials concerning a pending trial which were found to possess the tendency to obstruct the administration of justice. Justices Day and Clarke did not sit, and Justices Holmes and Brandeis dissented, on the ground that the acts of the newspaper were not within the summary power vested by the statute. The words of the statute were thought by Mr. Justice Holmes to "point only to the present protection of the Court from actual interference, and not to postponed retribution for lack of respect to its dignity—not to moving to vindicate its independence after enduring the newspaper's attacks for nearly six months as the Court did in this case." The publication, he held, was neither in the presence of the court nor "so near thereto as to obstruct the administration of justice," and was therefore not within the contempts over which summary power was vested by the statute. It was also said that by "misbehaviour" the statute "means something more than adverse comment or disrespect." Mr. Justice Holmes recognized that the articles which Judge Killets resented and for which he held the paper in contempt, "no doubt contained innuendoes not flattering to his personality." But he remarked soothingly that "a judge of the United States is expected to be a man of ordinary firmness of character," and that he could find in the publications nothing that could have a tendency to prevent "such a judge" from "performing his sworn duty," or "that would have affected a mind of reasonable fortitude."

[87] (1918) 247 U. S. 402.

IX. JURISDICTION AND PROCEDURE OF COURTS

THE EXTENT OF FEDERAL JUDICIAL POWER

Many of the cases already considered have passed upon the question whether federal jurisdiction obtained, since many constitutional issues are raised by the parties through an assertion or denial of the presence of a question under the Constitution of the United States. Thus when the parties properly raise the jurisdictional issue, the court before deciding a federal question must determine whether there is a federal question to decide. It is often a shadowy line which marks the distinction between a dispute whether a constitutional question exists and one as to how an alleged constitutional question should be decided. The court in one sense necessarily decides a constitutional question when it determines that no constitutional question has been raised. The cases reserved for treatment in this section are those in which the jurisdictionary question is either the only or the most prominent one in dispute. Though in form the decision may depend on a disputed application of the Judicial Code and therefore seem to be one of statutory rather than of constitutional construction, the boundaries defined by the code are often coterminous with those delimited in the Constitution, so that in substance the latter is involved as well as the former.

Of the decisions determining whether the case at bar arose under the federal Constitution, all but two have been placed in the preceding sections. These two are Ketcham v. Burr[88] and Cincinnati v. Cincinnati & Hamilton Traction Co.[89] In the former the court was unable to discover any federal question in a bill to set aside an adjudication of insanity and to restore papers of the petitioner used in the inquisition and kept in custody.

In the Cincinnati case the majority of the court found a federal question raised by allegations that a city was threatening to enforce an ordinance reciting that the complainant's franchise had expired, and declaring that the continued operation of the

[88] (1917) 245 U. S. 510.

[89] (1918) 245 U. S. 446. See 31 *Harvard Law Review* 879.

road would be deemed an acceptance of the ordinance. The city was enjoined from asserting in any proceedings the claim that the ordinance was accepted by continued operation, and from taking any other than judicial proceedings to interfere with the company prior to an adjudication of the validity of the ordinance. The federal district court that tried the case had gone further and "adjudicated in favor of the companies in respect of the grants, ordinances, and contracts relied on," and enjoined the city from any further proceedings whatever. But the Supreme Court accepted the declarations of counsel for the city that the only action contemplated under the ordinance was a judicial proceeding in the state courts in which of course its validity would be open to question, and therefore modified the injunction so that such a suit was not restrained.

The case evidently caused the court considerable difficulty, for it was twice reargued and the final decision was not handed down until two years after the original argument. The characteristically meager opinion of Mr. Justice McReynolds makes it difficult to find the principle or doctrine for which the case stands. The minority insisted, through Mr. Justice Clarke, that the court had to deal with "an utterly unsubstantial and purely paper attempt to carry into the federal courts a case which, because of its 'many difficult problems arising under local laws,' is peculiarly one for first decision in the state courts, with the right of revision in this court as provided by law." The ordinance itself was said to impair no rights until enforced, and as the only contemplated enforcement was not enjoined, the only conceivable present menace lay in the recital that continued operation would be deemed an acceptance of the ordinance. As to this, Mr. Justice Clarke said that any effort on the part of the city to declare that the company would waive its rights by continuing operations would be entirely ineffective, since, if it had any rights, it could not possibly waive them by continuing to exercise them.

There must be some better reason for the decision than the majority opinion reveals,[90] for only Mr. Justice Brandeis joined

[90] In the note in 31 *Harvard Law Review* 879, the decision is supported on the ground that, since the ordinance "provided for a reduction of the rates with an

in the dissent. Though the opinion declares that the district court had "power to adjudicate the issues presented," which Mr. Justice Clarke takes to mean that "it had authority to go forward and completely dispose of the controversy," the Supreme Court sets aside the district court's adjudication of the controversy without inquiring whether it was correct, and allows proceedings to be begun in the state court. The effect of the decision thus seems to be all that the minority desires, since, though the district court was held to have jurisdiction, it was forbidden to exercise it in any substantial degree.

In five cases it was disputed whether the controversy arose under a law of the United States, but in only one was the assertion of federal jurisdiction discountenanced. This was Emery & Co. v. American Refrigerator Transit Co.[91] which held that a claim to enforce a liability founded solely on contract or tort does not arise under the Interstate Commerce Act, notwithstanding the act may be material in fixing the damages in case the alleged liability is established.

With this may be contrasted Louisville & N. R. Co. v. Rice,[92] which held that a claim of an interstate carrier for disinfecting cars arises under the Interstate Commerce Act, although the only defense relied on is one of estoppel based on the delay in making demand on the consignee who was merely an agent and had accounted to his principal before the claim was presented. Since the carrier's claim was based upon the provisions of a tariff, duly filed, published and approved as required by the statute, the result of the claim was said to depend necessarily upon the construction and effect of the act.

alternative threat of legal action to eject the company from the streets," there was an exercise of coercive power by reason of the fact that "the law would have been practically self-enforcing since the public would have refused to pay more than the new rates until the companies had established their rights at law." But if that is a ground for entertaining jurisdiction, it would seem to afford a reason why the federal court should adjudicate the constitutionality of the ordinance, since after the decree as modified by the Supreme Court, the public may still refuse to pay the old rate of fare.

[91] (1918) 246 U. S. 634.

[92] (1918) 247 U. S. 201.

Although the Supreme Court had decided, before Boston Store v. American Graphophone Co.[93] reached it, that suits to enforce price maintenance contracts on patented articles were actions on collateral contracts and not on reservations of the monopoly right granted by the patent, it nevertheless held in that case that, since the question had not been conclusively settled at the time the cause originated below, the district court had jurisdiction to pass on the case made by the bill and to determine whether the suit was one arising under the patent law. This of course was merely jurisdiction to determine whether there was jurisdiction, which must exist until the question is definitely settled.

In Cissna v. Tennessee[94] the boundary between two states was in dispute. Since the boundary had been originally fixed by treaties and by acts of Congress, it was held that the question whether it had since been changed by alterations in the course of

[93] (1918) 246 U. S. 8. See 86 *Central Law Journal* 147, 18 *Columbia Law Review* 352, 3 *Southern Law Quarterly* 147, and 27 *Yale Law Journal* 714.

Questions of restraint of trade and of fair competition were passed upon in four other important cases, in which, however, no disputed constitutional issues appeared.

United States v. United Shoe Machinery Co., (1918) 247 U. S. 32, gave the defendant a clean bill of health, over the dissent of Justices Day, Pitney and Clarke. Inasmuch as Justices McReynolds and Brandeis did not sit, both having been of counsel, the case was decided by a minority of the court. See 27 *Yale Law Journal* 1060, 1084.

In Chicago Board of Trade v. United States, (1918) 246 U. S. 231, a rule of the plaintiff in error to the effect that after a certain hour in the day, "grain to arrive" should not be sold or bought at a price other than the closing bid at that hour, was held not to impose unreasonable restraint of trade. See 31 *Harvard Law Review* 1154, and 27 *Yale Law Journal* 1094.

In Hitchman Coal and Coke Co. v. Mitchell, (1917) 245 U. S. 276, and Eagle Glass & Mfg. Co. v. Rowe, (1917) 245 U. S. 276, officials of a labor union were enjoined from seeking to unionize a nonunion mine by securing secret promises to join the union from employees who had agreed to notify their employer and relinquish their employment in case they altered their nonunion status. Justices Holmes, Brandeis and Clarke dissented. See W. W. Cook, "Privileges of Labor Unions in the Struggle for Life," 27 *Yale Law Journal* 779, and T. R. Powell, "Collective Bargaining before the Supreme Court," 33 *Political Science Quarterly* 396. See also 52 *American Law Review* 95, 6 *California Law Review* 302, 86 *Central Law Journal* 39, 18 *Columbia Law Review* 252, 3 *Cornell Law Quarterly* 317, 31 *Harvard Law Review* 648, 16 *Michigan Law Review* 250, 3 *St. Louis Law Review* 54, and 27 *Yale Law Journal* 578.

[94] (1918) 246 U. S. 289.

a stream or by long acquiescence was one arising under the treaty and the laws of the United States. And the question whether an Indian nonceremonial marriage was "contracted under the laws or tribal customs" was held in Carney v. Chapman[95] to arise, "although somewhat remotely," under the statute of Congress validating marriages contracted in accordance with those laws or customs. The Indian law and custom may be regarded as incorporated by reference in the federal statute, so that the meaning and application of the statute can be known only by understanding the scope of the provisions of the Indian law that it incorporates.

Jurisdiction on the ground of diversity of citizenship was found to obtain in Sutton v. English.[96] There was no doubt that the formal parties had the requisite diversity of citizenship, the only dispute being whether the interests of the formal opponents were really adverse. The suit was, however, dismissed on the ground that it was essentially one to annul the probate of a will and so not within the equity jurisdiction of the federal courts.

In Chelentis v. Luckenbach S. S. Co.[97] the contract of employment of a fireman on an ocean steamship was held to be maritime in nature, and the rights and liabilities flowing therefrom to be matters of maritime law, so that the common-law rules as to compensation for injuries do not apply. Justices Pitney, Brandeis and Clarke dissented, but presumably only on the ground of the nonapplicability of the common law to a situation concededly within the admiralty and maritime jurisdiction.

In Wells v. Roper[98] a bill for injunction against an assistant postmaster general was found to be one in substance against the United States, so that no jurisdiction obtained. The complainant had a contract with the government for delivering mail. The contract contained a provision for termination on thirty days' notice, which notice had been duly given; but the complainant contended he still had a right to continue. The court told

[95] (1918) 247 U. S. 102.
[96] (1918) 246 U. S. 199.
[97] (1918) 247 U. S. 372.
[98] (1918) 246 U. S. 335.

him, however, that the granting of his bill would interfere with the government's plan to substitute a new method of delivery and that therefore his rights could not be considered in such a proceeding.

While the Constitution does not say that the courts shall not pass on political questions, such questions are regarded as beyond their constitutional powers. In application of this principle, Oetjen v. Central Leather Co.[99] and Ricaud v. American Metal Co.[100] declined to determine independently what was the lawful government of Mexico at a given time, declaring that it was bound by the action of the President in recognizing the Carranza government. It was also held that the court could not question the lawfulness of the action in Mexico of the Mexican government. Persons who objected to the seizure of property by the governmental authorities of Mexico were therefore denied relief.[101]

REQUISITES OF JURISDICTION OVER DEFENDANTS

In People's Tobacco Co. v. American Tobacco Co.,[102] the court quashed an attempted service on a foreign corporation through process on an alleged officer and also on the secretary of state. The officer was found to have ceased his connection with the company, and the company was held not to be doing business in the state. In compliance with a judicial order growing out of antitrust proceedings, the company had sold its business in the state. It still "owned stock in other companies which owned

[99] (1918) 246 U. S. 297. See 86 *Central Law Journal* 259, 18 *Columbia Law Review* 611, and 27 *Yale Law Journal* 812.

[100] (1918) 246 U. S. 304. See 31 *Harvard Law Review* 1167.

[101] For three cases holding that the complaint against alleged state action did not draw in question the validity of any statute or of any authority exercised under a state, as the phrase is used in the Judicial Code authorizing writs of error from the Supreme Court, and that review of the questions raised could be obtained, if at all, only "under that clause of the certiorari provision which reads 'or where any title, right, privilege or immunity is claimed under the Constitution, etc.,'" see Stadelman v. Miner, (1918) 246 U. S. 544; Philadelphia & Reading Coal & Iron Co. v. Gilbert, (1917) 245 U. S. 162; and Ireland v. Woods, (1918) 245 U. S. 323.

[102] (1918) 246 U. S. 79. See 86 *Central Law Journal* 305.

stock in companies carrying on . . . . business within the state," and it sent its solicitors into the state. But these solicitors had no right to make sales on account of the defendant or to collect money or to extend credit. All orders received by them were turned over to jobbers to fill. After reiterating that each case must depend upon its own facts, the court held that the facts related did not justify the inference that the corporation was doing business in the state so as to be amenable to process there.

PROCEDURAL REQUIREMENTS

Wear v. Kansas[103] rejected a complaint that a state court by taking judicial notice of the navigability of a river had denied due process, in that a jury trial on the question was thus prevented. The court said that there is no right under the federal Constitution to a jury trial in such a case. In Postal Telegraph Cable Co. v. Newport,[104] however, an erroneous decision that defendant was concluded by a judgment against his grantor was held to be a denial of the constitutional right to be heard. The court recognized that "res adjudicata, like other kinds of estoppel, ordinarily is a matter of state law," but pointed out that a state court cannot by an obvious error "give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein," without necessarily depriving the party so concluded of the right to a hearing guaranteed by the Fourteenth Amendment.

The difficulties likely to arise in the application of this doctrine may be appreciated from Jones v. Buffalo Creek Coal Co.,[105] in which a defendant brought to the Supreme Court the rightfulness of the admission by the trial court of decrees in prior proceedings against his predecessors. The defendant insisted that the "premises in question were not within the tracts affected by one or more of the decrees" thus received to create an estoppel against him. Though the Supreme Court found it conceivable

[103] (1917) 245 U. S. 154.
[104] (1918) 247 U. S. 464.
[105] (1917) 245 U. S. 328.

that the defendant was right in whole or in part, and that the trial judge erred in admitting some or all of the evidence objected to and in rendering judgment for the plaintiff, it refused relief on the principle that "error of a trial judge in admitting evidence or entering judgment after a full hearing does not constitute a denial of due process of law."

Union Pacific R. Co. v. Laughlin[106] held that no federal right was denied by the application by a state court of a state statute creating attorneys' liens and giving to an attorney an independent action for his fee against a defendant who after proper notice of a claimed lien settled directly with the client. Mr. Justice Brandeis said that the "statute simply gives a cause of action against one who with knowledge of the existence of a lien deforces it," and that the granting of such a remedy against a wrongdoer deprived him of no federal right, even though his wrong was accomplished by paying into a federal court the amount of a judgment there rendered. Since no substantial federal question was found to be involved, the writ of error from the state court was dismissed.

FAITH AND CREDIT TO PROCEEDINGS OF SISTER STATES

The familiar rule that a judgment of a sister state is not conclusive on the question of the jurisdiction of the court that rendered it was relied on by the defendant in Marin v. Augedahl[107] to sustain the refusal of a North Dakota court to enforce a Minnesota decree ordering an assessment against the stockholders of an insolvent Minnesota corporation. It seemed to be conceded that the Minnesota court had erred in rendering the decree, for the constitutional provision on which the liability of the stockholder was based expressly excepted manufacturing corporations, and the corporation in question manufactured biscuits. The Dakota court had held that the Minnesota court was without jurisdiction to lay an assessment on the stockholders of those

[106] (1918) 247 U. S. 204.

[107] (1918) 247 U. S. 142. See 17 *Michigan Law Review* 90, and 28 *Yale Law Journal* 282.

corporations excepted from the operation of the Minnesota constitutional provision, and Justices Clarke, Pitney and Brandeis agreed with it. But the majority of the Supreme Court thought that the provision relied on did not deal with the jurisdiction of Minnesota courts, i.e., with "their power to hear and determine," but merely prescribed "in a general way the relative rights of stockholders and creditors." At the most, then, the Minnesota court had "erred in ruling on a matter of substantive law regularly presented to it for decision in a pending suit," and its judgment was neither void nor open to collateral attack in proceedings in other states.

In Bates v. Bodie[108] the Supreme Court found that the Nebraska court had denied full faith and credit to a prior Arkansas judgment by failing to regard it as a bar to a new suit in Nebraska. A divorced wife, who had been awarded a money judgment for alimony in Arkansas, brought a bill in Nebraska to get more alimony from Nebraska land, on the theory that the Arkansas court had no jurisdiction over extra-state realty and had therefore not determined any question with respect to her rights therein. She prevailed in Nebraska, but the Supreme Court held that the Arkansas chancellor, with jurisdiction to render a money judgment, might in fixing its amount give such consideration as he chose to property in other jurisdictions, and that there was evidence to confirm the inference to be drawn from the face of the Arkansas decree that the amount awarded was "in full of alimony and all other demands."

Gasquet v. Fenner[109] presented the case of a Louisiana lunatic, adjudged incompetent and interdicted in Louisiana proceedings, who moved to Kentucky where it was adjudged that he measured up to the standard of sanity prevailing in that state, and that any disability by reason of the Louisiana interdict was "hereby removed." The restored reason of the plaintiff moved him to bring a bill in the federal court of Louisiana against the executor of his mother's estate to compel payment of his share thereof. He contended that failure to grant his request would deny full

[108] (1918) 245 U. S. 520. See 86 *Central Law Journal* 151.
[109] (1918) 247 U. S. 16.

faith and credit to the Tennessee adjudication of sanity. It was disputed whether the plaintiff had become a citizen of Tennessee, but the Supreme Court did not pass on this and therefore was relieved from deciding whether a determination of capacity by a court of the person's domicile must be respected in other jurisdictions. The decree dismissing the bill is based on the ground that, since Louisiana provided that an interdiction could be revoked only by the same solemnities which were observed in pronouncing it, the plaintiff must go to the court in which he had been pronounced insane. "Whatever may be the conclusiveness of the Tennessee decree it cannot operate upon the interdiction directly. At most it can only furnish ground for a conclusive right to have the interdiction removed . . . . Assuming that the plaintiff has every other right that he says, he cannot pursue his rights across country, but must proceed along the road that Louisiana law provides." Mr. Justice Holmes remarks that this ground of decision "may be called a matter of form rather than substance." But "upon that," he says, "we are not curious to inquire. It is enough that the reason seems to us sufficient."

In Hartford Life Ins. Co. v. Barber[110] a Missouri court was reversed because it failed to apply a Connecticut judgment on the power of a Connecticut insurance company to increase its assessments on members. This judgment had been rendered in a "class suit," by which all members of the company were held to be bound. In the course of dismissing an alleged distinction between the controversy in Missouri and that previously adjudicated in Connecticut, Mr. Justice Holmes declared that "the powers given by the Connecticut charter are entitled to the same credit elsewhere as the judgment of the Connecticut court." In support of this statement he cited Royal Arcanum v. Green,[111] thus strengthening the implication to be drawn from the opinion in that case to the effect that the duty of a state to accept the law of a sister state as to the powers of corporations of that state

[110] (1917) 245 U. S. 146. See 87 *Central Law Journal* 2, and 27 *Yale Law Journal* 406, 547.

[111] (1915) 237 U. S. 531. See 12 *American Political Science Review* 663.

is not limited to suits in which some privity can be established between the litigants before the court and those in earlier proceedings in the court of the sister state. The Supreme Court seems to be feeling its way towards a doctrine that the full-faith-and-credit clause compels the acceptance by sister states of the law of the home state of a corporation with respect to the powers of that corporation, quite independently of the familiar principle that a litigant is bound by judgment to which he was a party or privy. But the suggestions in the opinions run ahead of the actual decisions, and their force and scope are therefore uncertain.

In connection with this development, note should be taken of New York Life Ins. Co. v. Dodge[112] which reversed a Missouri judgment on a Missouri insurance policy, on the ground that the Missouri court incorrectly applied a Missouri rather than a New York statute to determine whether the policy was forfeited by failure to pay a loan secured by it. The Missouri court held that, since the policy was a Missouri contract, the question whether it had subsequently been forfeited depended on Missouri law. The Supreme Court, however, held that the determining issue was the validity of the agreement made in connection with the loan, that this loan was a New York contract, and that to apply the Missouri law would cause the Missouri statute to operate extraterritorially and would deprive the insurance company of property without due process of law by treating as invalid a contract valid where made and to be performed. The right of Missouri citizens to make extra-state contracts of this kind was declared a part of the liberty of contract guaranteed by the Fourteenth Amendment, so that no assumed power of Missouri over foreign insurance corporations admitted to Missouri could be used to defeat the right of Missouri citizens to make contracts elsewhere.

Mr. Justice Brandeis wrote a dissenting opinion, in which Justices Day, Pitney and Clarke concurred. He insisted that the loan on the policy was really made and to be paid in Missouri,

[112] (1918) 246 U. S. 357.

but declared that, even if it were agreed that it was a New York contract, the Constitution does not require that the New York loan agreement must defeat rights under the Missouri law in the Missouri policy of insurance. Missouri may provide that Missouri contracts may not be invalidated by later agreements which Missouri does not recognize. It may not control the validity of the loan made elsewhere, but it may control the effect on Missouri contracts of the nonpayment of the loan, at least to the extent of furnishing the rule of decision for Missouri courts. The state's power over the foreign corporation may be exercised to forbid it to defeat rights arising from Missouri policies, and the corporation cannot be heard to object that the Missouri law abridges the privileges of Missouri citizens to make contracts in other states.

X. ADMINISTRATIVE POWER AND PROCEDURE

New York & Queens Gas Co. v. McCall[113] declared that the only federal questions open in complaints against the orders of state utility commissions are whether "there was such a want of hearing or such arbitrary or capricious action on the part of the commission as to violate the due process clause of the Constitution." In the case at bar the procedure by which the commission reached its determination was clearly ample. The company had appeared, introduced evidence, cross-examined witnesses and argued the case. The case had been reëxamined on certiorari by one state court and reviewed on appeal by another, both of which had sustained the order compelling the extension of gas mains to a new and rapidly growing suburb. There was contradictory evidence as to the cost of the extension and the probable immediate returns; but the Supreme Court declined to analyze and balance the evidence, and declared that it had no power to review the wisdom of the administrative determination. It found no difficulty in sustaining the order, in view of the fact that there was no claim that such loss as might ensue would

[113] (1917) 245 U. S. 345. See 2 *Cornell Law Quarterly* 126, 31 *Harvard Law Review* 644, and 27 *Yale Law Journal* 715.

render the business as a whole unprofitable, Mr. Justice Clarke declaring: "Corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory covered by their franchises which it is presently profitable for them to serve and restricting the development of the remaining portions by leaving their inhabitants in discomfort without the service which they alone can render. To correct this disposition to serve where it is profitable and to neglect where it is not, is one of the important purposes for which these administrative commissions, with large powers, were called into existence, with an organization and with duties which peculiarly fit them for dealing with problems such as this case presents."

Louisville & N. R. Co. v. United States[114] indicates that a strong case must be presented before the court will consider seriously a complaint against a refusal of the interstate commerce commission to exempt an interstate carrier from the prohibition against charging more for a shorter than for a longer haul. The evidence before the commission was conflicting, but since there was ample to sustain the finding, it was held conclusive. Mr. Justice Brandeis said that all of the assignments of error "are unsound" and that "none deserves detailed discussion." It was affirmed specifically that the order did not deny due process because it "was broader than the hearing held in connection therewith," or because "the Commission failed to act on 'other phases' of the application."

In Rosen v. United States,[115] a regulation of the post office department designating private mail boxes as "authorized depositories of mail matter" was said to have the "force and effect of law," so that larceny from such private boxes was punishable under the statute punishing larceny from "authorized depositories."[116]

[114] (1918) 245 U. S. 463.

[115] (1918) 245 U. S. 467. See 86 *Central Law Journal* 95, 257, 16 *Michigan Law Review* 387, 63 *Ohio Law Bulletin* 141, and 27 *Yale Law Journal* 572.

[116] For cases sustaining administrative action in relation to Indian lands, see Anicker v. Gunsberg, 246 U. S. 110; Northern Pac. Ry. Co. v. Wismer, 246 U. S. 283; and United States v. Ferguson, 247 U. S. 175, all decided in 1918.

For a case in which tests used for ascertaining the quality of tea were held to be outside the power delegated to the secretary of the treasury, see Waite v. Macy, (1918) 246 U. S. 606.

XI. BANKRUPTCY

The decision in Stellwagen v. Clum[117] that certain provisions of the Ohio insolvency laws were not suspended by the federal Bankruptcy Act was based on familiar constitutional principles that such state laws are suspended only in so far as they actually conflict with the federal enactment, and that a federal law is not lacking in the requisite uniformity because it gives to the trustee the rights which general creditors may have under state laws, even though this produces different results in different states. The Ohio law was held not to be a bankruptcy law, since it did not provide for the discharge of the debtor but merely regulated the distribution of his assets. In applying the principles to the case at bar, the court allowed the trustee the benefit of a state law making a transfer void as against creditors, although the transfer would have been impeccable under the federal law except for its adoption of the state law.

[117] (1918) 245 U. S. 605. See 16 *Michigan Law Review* 540.

AMERICAN GOVERNMENT AND POLITICS

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The Short Session of Congress. On March 4, 1917, when the senate filibuster killed the armed neutrality bill, President Wilson issued a statement in which he said that the situation was "unparalleled in the history of the country, perhaps unparalleled in the history of any modern government. . . . . The explanation is incredible. The senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action. A little group of willful men, representing no opinion but their own, have rendered the great Government of the United States helpless and contemptible." The remedy, the President said, was a revision of the senate rules so that the majority would not be powerless without securing unanimous consent. On March 8, at a special session of the senate, a compromise form of closure was agreed to;[1] but when it is invoked action is delayed for at least several days, and it could not be used, therefore, to prevent the third session of the Sixty-fifth Congress from ending on March 4, 1919, in an exercise of freedom of discussion, or rather unrestrained garrulity, on the part of a few Republican senators who desired to embarrass the President and force an immediate special session. Seven of the appropriation bills, the passage of which is the chief congressional business at the short session, failed to come to a vote, although, even

[1] Senate Resolution 5 provided that "if at any time a motion signed by sixteen senators, to bring to a close the debate upon any pending measure is presented to the senate, the presiding officer shall at once state the motion to the Senate, and one hour after the senate meets on the following calendar day but one, he shall lay the motion before the senate" and, if a quorum is present, submit without debate the question: "Is it the sense of the senate that the debate shall be brought to a close?" If this question receives a two-thirds affirmative vote, then the measure is the unfinished business of the senate to the exclusion of all other business. No senator is entitled to speak more than one hour; except by unanimous consent no amendment is in order unless presented before the motion to bring the debate to a close; dilatory motions will not be considered, and points of order are decided without debate.

without a filibuster, all could not have been passed. President Wilson issued a statement which recalled that of 1917. "A group of men in the senate," he declared, "have deliberately chosen to embarrass the administration of the Government, to imperil the financial interests of the railway systems of the country, and to make arbitrary use of powers intended to be employed in the interest of the people."

But the unprecedented legislative jam in the senate was due to something more than a desire to embarrass the administration. The extra-constitutional, but in most cases tolerably effective, control of Congress which the executive is accustomed to exercise, was lacking, partly because, for the first time in the history of the country the President had been in Europe. Congress, left to its own devices, showed very clearly the need for a drastic revision of its procedure.[2] The senate had had ample opportunity to act on various measures before the filibuster began, but it had expended too much time in discussing the administration's conduct of the war, the league of nations, and the terms of peace. In the house also much time was employed in debating these questions and in describing the trips to Europe made by various representatives, but much more business was finished than in the senate. The legislation passed was unusually meager. Apart from the appropriation bills, the Revenue Act, and two measures allowed to pass through the filibuster—the Victory Loan and Wheat Guarantee acts—there was nothing of importance. The session was notable, however, for the strained relations between the President and Congress and for committee activity.

The President and Congress. Mr. Wilson, since his first inauguration, has dominated Congress. This has come about from a variety of reasons of which not the least interesting, in view of the proposed

[2] It is worthy of note that the King, in his Speech from the Throne on the opening of the English Parliament (February 11) spoke of the "large number of measures affecting the social and economic well-being of the nation" that "await your consideration." It was of the utmost importance, he said, "that their provisions should be examined and, if possible, agreed upon and carried into effect with all expedition. With this object in view My Government will invite the consideration of the House of Commons to entertain proposals for the simplification of the procedure of that house which, it is hoped, will enable delays to be avoided and give its members an increasing opportunity of taking an effective part in the work of legislation."

The proposals of the government were very drastic and were accepted by the House with unfeigned reluctance. They included the increase of the standing

changes in the house of commons procedure, is the fact that congressional legislation is committee legislation; interest and responsibility are obscured because the law making is done in small, separate groups, and whatever effective leadership there is comes from the executive. In foreign affairs Mr. Wilson's dictatorship has been especially extreme; he has directed American diplomacy without any check except public opinion. Alone he determined our neutral policy, and, after the declaration of war, the extent and manner of participation. As commander-in-chief of the army and navy he could agree on the armistice terms, and his European visits were made and the other peace commissioners appointed without consulting the senate. Whatever treaties he agrees to at Paris must, of course, receive a two-thirds vote to be binding on the country; but the President is unrestricted as to the choice of time and manner for submitting agreements to the senate, and he may withdraw them if at any time it seems likely that objectionable amendments will be insisted upon. With these enormous powers and possessing the ear of the public, he can go far towards coercing the senate which is the only legislative body which must consent to the agreements negotiated by the executives of the Allies at Paris. But over the league of nations covenant, the President and the senate came to open warfare.

The trouble has been brewing for some time. Congress, given by the Constitution a position coördinate with that of the President, has resented executive control. So long as the emergency of the war obtained, it could only consent; but when the armistice came, this inhibition was removed and the desire to reassert congressional authority was helped along by two events—the election of a Republican Congress and the President's trip to Europe. This intention to leave the United States was formally announced in the annual address on December 2, but

committees from four to six, with much more work to be done in committee than has hitherto been the case, and a form of closure known as "kangaroo," under which the speaker has the power to select amendments which the house may discuss. Until March 31 no bills except government measures were to be introduced, and the speaking privileges of private members are to be curtailed. The government proposed to cut down the discussion of supply—the historic *raison d'etre* of the house—from twenty to twelve days, but on this point was forced to abandon its position. Measures have been proposed making the reëlection of ministers unnecessary and creating ministries of health and communications. The whole problem of legislative procedure—in the lords as well as in the commons—and of administrative reform will have to be dealt with shortly, although the emergency is by no means so acute as it is in the United States.

there was the simple statement that the President had decided to go and no attempt to justify a great departure from precedent. Furthermore, while the President was well within his constitutional rights in not consulting the senate, either as to his trip or as to the personnel of the peace commission, this attitude was naturally resented.

It has seemed to many that, without sacrificing any of his principles and without suffering any diminution of his authority, Mr. Wilson need not have played such a lone hand. Had he taken the senate into his confidence much criticism would have been forestalled. The original constitutional conception was that the senate and the President should act together in the conduct of foreign relations, and at first Washington was accustomed to meet with the senate in executive session. He abandoned this practice because all real discussion—and sometimes criticism of his views—was postponed until after his departure. Subsequent presidents, while not bound to do so have generally, as a matter of policy, consulted the members of the senate committee on foreign relations with regard to foreign affairs, and in this manner possible objections have been foreseen and the path to approval made easier and shorter. President Taft's arbitration treaties of 1911 were negotiated without consulting the senate committee, and the senate so amended them that Mr. Taft withdrew the drafts. President Wilson and Secretary Bryan adopted other tactics on the latter's treaties and were successful in securing approval by the senate.

In connection with the Peace Conference, however, Mr. Wilson made no effort to create that atmosphere of trust and of common counsel which he argued for so eloquently in his books on the American government. Instead, the senate was ignored, and in consequence became eager to harass and worry and to seize the first opportunity to voice objections to the President's peace program and to declare that the league of nations covenant would not be ratified without material amendments. While Mr. Wilson was in Europe reports from the Peace Conference made a good many of the chief objectors admit that the unprecedented journey was justified; but when the President cabled a request to the senate to delay the discussion of the league of nations covenant until his return to the United States, he declared that there were good and sufficient reasons for even the phraseology of each article, and his two public speeches in the United States were devoted to generalities rather than to an exposition of the exact terms of the document. Had Mr. Wilson declared that he stood by the fundamental principles of the covenant, but that criticisms or amend-

ments of detail were invited, he could have avoided much opposition. Instead, he took the autocratic, isolated, and implacable attitude which was most easy and perhaps most familiar to him. At best the senate would have approached the league of nations covenant in a hesitating, puzzled manner. Almost entirely ignored by Mr. Wilson, dependent on newspaper reports for what has happened at Paris, the senators have been antagonized and have been eager to voice objections to the President's program. Thus forty senators signed the resolutions, presented by Senator Lodge, which declared that the covenant in the form first published could not be ratified.

Mr. Wilson, it would seem, might have realized that in the Massachusetts senator he could find a supporter or a most powerful opponent. As chairman of the next senate committee on foreign relations Mr. Lodge had a moral if not a legal right to be consulted by the President. Such a course might have prevented the league from becoming a party issue; by consulting senators—perhaps taking some to Paris with him to meet representatives of foreign nations and learn the realities of the international situation—Mr. Wilson could have conciliated the body associated with him in the conduct of foreign relations. He would only have been following the precedents set by previous presidents in consulting the senate either formally, or informally, about proposed treaties;[3] he might have avoided the bitter struggle which seems probable to secure the ratification of the treaties; and he would have escaped at least some of the congressional antagonism which, in varying degrees, has been the lot of every second term American President. As it is, Mr. Wilson's dealings with Congress on all matters will be made more difficult by the inevitable reaction against presidential dictatorship and the methods used in conducting our foreign relations.

At the same time it should be recognized that the unprecedented publication of the committee draft for the proposed league covenant, before action by the Peace Conference, is of itself a significant step in the direction of open diplomacy, and has in fact led to an active public discussion of the specific provisions of the draft, hitherto unknown, which has brought about some amendments. So, too, the President's conference at the White House, in February, with the senate and house

[3] The precedents are collected in Senate Document No. 104, 57th Congress, 1st Session, a reprint of an article by Senator Lodge on "The Treaty Making Power of the Senate," *Scribner's Magazine*, January, 1902. See also Corwin, *The President's Control of Foreign Relations.*

committees on foreign relations gave opportunity for an interchange of views, though from the published reports it does not appear that there was any consideration of suggested changes which might meet some of the objections.

Legislation Passed. The legislation passed during the session, as has been said, was exceedingly meager; and the spectacle of Congress talking interminably and accomplishing little was in marked contrast to the activity of the war sessions, of those immediately after Mr. Wilson's first inauguration when the Democratic party established a record for the number and importance of the additions to the statute book, or even of those in the days of "Cannonism," when, although the rules of the house were tyrannical and unfair, business was accomplished.

Most notable, of course, was the Revenue Act; but this was a hold-over measure from the long session and an illustration of the fact that congressional procedure is in need of improvement. The President addressed Congress on May 27, 1918, and asked for increased taxes. "It would be manifestly unfair," he said, "to wait until the early months of 1919 to say what they are to be," and he could not "assure the country of a successful administration of the Treasury in 1918 if the question of further taxation is to be left undetermined until 1919." Through part of the summer Congress recessed for three day periods to allow the committee on ways and means to frame the tax bill (H. R. 12863). This was reported in the house on September 3, and seventeen days later was passed. It was not reported in the senate until December 6, and its subsequent legislative history was as follows: passed the senate and conferees appointed December 23; house conferees appointed January 2; conference report February 6; agreed to in the house February 8; agreed to in the senate February 13, and signed by the President February 24 (Public Law No. 254). This does not seem to have met the President's request for prompt action.

The financial details of the law are too well-known to need recapitulation here, but mention may be made of several riders which represented some of the most important legislation passed at the session. A prohibitive tax was placed upon the employment of children and the question whether Congress may control child labor in the states by the simple expedient of making it unprofitable will go to the Supreme Court, which, on June 3, 1918, declared unconstitutional the law which attempted to accomplish the same result by preventing interstate com-

merce in the products of child labor.[4] The provisions in the Revenue Act are copied in part from the regulations for the excess profits tax and the law on its face is a revenue one, although its sponsors, of course, hope that there will be no returns under it.[5] A similar rider amends the provisions of the Act of December 17, 1914[6] relating to the sale and distribution of habit forming drugs.

The Revenue Act grants free postage to soldiers and sailors on foreign duty; restores the postage rates as in force before October 2, 1917 (effective July 1, 1919); grants a gratuity of $60 to men discharged from the army; and creates a drafting service to prepare legislation for committees. There are also, of course, a number of administrative provisions;[7] the importation of distilled spirits produced after October 3, 1917 is forbidden; and the Reed "bone dry" law is made applicable to the District of Columbia.

One hundred and five bills received the approval of the President, but the vast majority of these were unimportant.[8] More than half authorized bridges and public improvements and were distinctly local

[4] C. 432, 39 Stat. at L. 675: Hammer v. Dagenhart, 247 U. S. 529.

[5] *Cf.* the article by Judge Hough entitled "Covert Legislation and the Constitution," 30 *Harvard Law Review* 801; Veazie Bank v. Fenno, 8 Wall. 533 (1869); McCray v. United States, 195 U. S. 27 (1903); and U. S. v. Jin Fuey Moy, 241 U. S. 394 (1916). Oleomargarine, state bank notes, phosphorous matches, transactions in cotton futures, and drugs are the precedents for the child labor rider.

[6] The Harrison Drug Act, 38 Stat. at L. 785.

[7] The house proposed to tax salaries received from the states and minor political subdivisions. The senate ignored the subject and left it to administrative determination as to whether such taxes are constitutional, with the result that the state exemption still holds. The act for the first time imposes the income tax on the compensation of the President and United States judges, and thus raises a constitutional question.

[8] During the session more than 3000 bills were introduced in the house and nearly 500 in the senate. The exact figures for the whole Congress are as follows:

Number of House Bills introduced	16,239
Number of Senate Bills introduced	5,680
Number of House Joint Resolutions	445
Number of Senate Joint Resolutions	230
Number of Public Laws approved	349
Number of Public Resolutions approved	56
Number of Private Laws approved	48
Number of House Committee Reports	1,187
Number of Senate Committee Reports	790

I am indebted for these figures to Mr. W. Ray Loomis, Assistant Superintendent of the House Document Room and the compiler of the *Monthly Compendium* and *Weekly Compendium* of the War Congress.

in their nature. Of the rest, there were several necessary amendments of the War Risk Insurance Act; an appropriation of $100,000,000 for starving Europeans outside of Germany; a few pieces of army legislation, the most important of which was the validation of emergency contracts not legally made (H. R. 13274, March 2, 1919, Public Law No. 322); provision for taking the fourteenth census, and some amendments to the Federal Reserve Act.

Perhaps the two most important measures of the session—apart from the Revenue Act—were passed after the filibuster began. One of these was the law authorizing the fifth liberty loan and amending the War Finance Corporation Act (H. R. 15979, March 3, Public Law No. 328). This provided for a loan of $7,000,000,000 in the form of notes for a period of from one to five years, the secretary of the treasury to determine the four classes (according to the degree of exemption from taxation) and the rate of interest. The War Finance Corporation is given authority to promote foreign commerce, and its life is extended for a year instead of six months after the conclusion of peace.

The other act which emerged from the tie-up in the senate appropriated $1,000,000,000 for guarantees to producers of wheat (H. R. 15796, March 4, Public Law No. 348). The President is authorized to create agencies for the purchase of the 1919 crop at $2.26 a bushel. Of greater importance than this measure was the general deficiency bill, which included an appropriation for financing the railroads; but a filibuster against the farmer was out of the question and in spite of slow legislative machinery Congress found itself able to guarantee the price of wheat and to secure a fair amount of "pork" in the rivers and harbors bill which was signed by the President on March 2 (H. R. 13462, Public Law No. 323).[9]

[9] A Public Buildings Bill was reported without passing the house (H. R. 16129). Four pension bills were passed, making a total of twenty-eight for the Congress.

A great many private bills were included in the omnibus pension laws as follows:

	HOUSE	SENATE	TOTAL
Civil War	2,090	742	2,832
Regular army and wars other than the Civil War	673	136	809
Total	2,763	878	3,641

The Appropriation Bills. The status of all the appropriation bills at the close of the third session is shown on the accompanying table. Seven of these important measures—the District of Columbia, Indian, agricultural, navy, army, sundry civil (including $660,000,000 for the shipping board), and general deficiency bills—failed to pass. Even without the filibuster, not all of these would have been finished, and the record of Congress affords abundant arguments in favor of a budget system—not solely on the grounds of economy and efficiency, but to enable the necessary appropriation laws to be passed. With procedure as it now is and with no effective leadership Congress cannot find time to perform the duties which are the principal business of the short session.

Of the bills which failed to pass that making general deficiency appropriations was the most vital, because it met the immediate needs of the various departments for the remaining four months of the fiscal year and granted $750,000,000 to the revolving fund of the railroad administration. Half of this amount was necessary for back debts. The remaining bills contained appropriations which would not be available until July 1, and if Congress is called in special session by May, there will at least be time to prevent paralysis by resolutions continuing the old appropriations—a device which Congress, unfortunately, is employing with increasing frequency. With such uncertainty, however, the departments cannot formulate plans which would be possible if they knew what funds would be available; and in two cases, at least, important branches of the government are without definite policies because their appropriation bills had legislative riders.

The army bill provided for a volunteer force of 500,000 men. Under existing laws the limit is 175,000 and plans for demobilization on the basis of retaining at least 500,000 men are made uncertain. Another rider to the bill provided for the re-creation of the national guard, since, under a decision of the judge advocate general, the absorption of the national guard in the army destroyed the old organizations. Appropriations by state legislatures will also be necessary to reëstablish the various militia units and this concurrent legislation may be delayed by the failure of Congress to pass the bill.

*History of Appropriation Bills, Third Session**

NUMBER OF BILL (H. R.)	TITLE	NUMBER OF HOUSE REPORT	PASSED HOUSE	NUMBER OF SENATE REPORT	PASSED SENATE	SENT TO CONFERENCE	NUMBER OF CONFERENCE REPORT (HOUSE)	NUMBER OF CONFERENCE REPORT (SENATE DOC.)	CONFERENCE REPORT AGREED TO	DATE APPROVED	NUMBER OF LAW
			1918		*1919*	*1919*			*1919*	*1919*	
13277	Dist. of Col...	842	Dec. 11	683	Feb. 24	Feb. 25					
13308	Post Office....	849	Dec. 18	666	Feb. 8	Feb. 10	1088	390	Feb. 25	Feb. 28	299
13462	Rivers and Harbors.....	878	*1919* Jan. 13	665	Feb. 18	Feb. 20	1130		Feb. 26	Mar. 2	323
14078	Legislative.....	910	Jan. 18	679	Feb. 20	Feb. 22	1146		Feb. 26	Mar. 1	314
14516	Dipl. and Cons.	935	Jan. 22	698	Feb. 26	Feb. 28	1165		Mar. 3	Mar. 4	346
14746	Indian.....	945	Jan. 25	747	Feb. 28	Feb. 28					
15018	Agriculture....	980	Feb. 1	752							
15140	Second deficiency for 1919.	989	Jan. 29		Feb. 10	Feb. 11	1058		Feb. 12	Feb. 25	275
15219	Pensions.....	997	Feb. 1	696	Feb. 7					Feb. 25	276
15462	Military Acad.	1019	Feb. 4	711	Feb. 21	Feb. 25	1145		Mar. 3	Mar. 4	347
15539	Navy.....	1024	Feb. 11	777							
15835	Army.....	1048	Feb. 18								
15979	Fortifications..	1069	Feb. 19	750	Feb. 26					Mar. 3	327
16020	Railroads.....	1083	Feb. 21								
16104	Sundry Civil..	1117	Feb. 28								
16187	General deficiency.....	1148	Feb. 28	790							

* From the *Weekly Compendium* for March 10, 1919.

Notes.—The conferees could not reach an agreement on the District of Columbia bill (H. R. 13277).

The conference report on the Indian bill (H. R. 14746) was agreed to in the house March 4, but consideration was prevented in the senate.

The agriculture bill (H. R. 15018) was reported but not considered by the senate. The same was true with respect to the navy bill (H. R. 15539) and the army bill (H. R. 15835). The army bill was reported February 25, 1919, without a separate report being printed.

The railroad deficiency appropriation bill (H. R. 16020) was not reported to the senate, but adopted as an amendment to the general deficiency bill (H. R. 16187).

The sundry civil bill was not reported out by the senate committee.

The general deficiency bill (H. R. 16187) was under consideration when the senate adjourned sine die.

In the naval appropriation bill were included regulations which determined the personnel and building programs. There was also the highly contentious rider which authorized ten capital ships and ten scout cruisers after July 1, 1920, the specific program to be determined by the President. The measure passed the house, partly on account of Mr. Wilson's confidential and much discussed cablegram to the chairman of the house naval affairs committee recommending immediate action. Its career in the senate is likely to be somewhat delayed. Senator Penrose declared that the discretionary provision alone would require a month's debate.

Problems Left for the New Congress. A number of other important measures were left for the new Congress. Some of these belonged to the very meager reconstruction program sponsored by the administration. Secretary Lane's soldiers' settlement bill, which carried an appropriation of $100,000,000 for farms to be reclaimed by irrigation or drainage and to be settled by men who have served in the army and navy (H. R. 15993) did not come to a vote in the house of representatives. The Shields water power bill (S. 1419) which it is anticipated will greatly encourage the use of hydro-electric plants, passed the senate on December 14, 1917, and the house on September 5, 1918. It was sent to conference on September 30 and the conference report was adopted by the house during the short session, but no action could be secured in the senate. Nor could agreement be reached on the bill (S. 2812) to encourage the production of coal, phosphate, oil, gas, potassium and sodium. It passed the senate in January and the house in May, 1918, and went to conference. A report was not made until February 18, 1919, and on February 22 the senate ordered the bill to be sent back to conference.[10]

Other measures which failed included a bill (H. R. 15302) reported in the house, to prohibit immigration for four years; the so-called "red flag" bill (S. 5207); a measure to enforce wartime prohibition which

[10] There were seven bills which passed both houses but which died in conference or through failure to agree to conference reports: H. R. 5559, relating to projects under the Carey Land Act; H. R. 7236, amending the act permitting rights of way through canals, reservoirs, and tramroads; H. R. 10851, providing for the disposal of liquor in the possession of court officers; H. R. 13277, District of Columbia Appropriations; H. R. 14746, Indian appropriations; S. 1419, Water-power bill; and S. 2812, Oil and gas leasing bill.

The President exercised his right of veto on five occasions, all during the second session. The measures which were sent back to Congress—none passed over

is effective after July 1 (S. 5561); the resolution (H. J. R. 439) to repeal section 904 of the Revenue Act (1919) which imposes a tax on household goods, clothing and certain luxuries; the civil service retirement bill (H. R. 12352 and S. 4637), and the resolution (H. J. R. 368) to extend the period of government control of the telephone and telegraph systems. A number of appointments (including that of A. Mitchell Palmer, alien property custodian, to be attorney general) were not confirmed and the Colombia Treaty was left unratified.

In addition to these matters, the new Congress will be called upon to determine the policy of the government with regard to the enforcement of national prohibition under the constitutional amendment and the return of the railroads to private owners, which is inadvisable, as the President said in his annual address to Congress, without material modifications of the old régime. Congress will require months for a determination of what to do with the railroads. The revision of the court-martial laws (several minor amendments were passed in the short session) will reopen the controversy between Generals Crowder and Ansell which will doubtless be investigated by congressional committees. Other problems include woman suffrage, the future of the war risk insurance bureau, the amendment of the anti-trust laws, revision of the tariff (proposed by the Republicans), the reform of the shipping laws, unemployment measures (possibly furnishing an excuse for an omnibus public buildings bill), and the leasing of water power and oil lands. The new Congress, furthermore, is likely to have an epidemic of investigations which will more than equal the activity of the Democrats when they gained control of Congress in 1910. During the Sixty-fifth Congress there were thirty-two investigations.

The attention of the senate, for a considerable time, at least, will be devoted to the agreements reached at Paris. The terms of peace and the provisions of the league of nations covenant are certain to cause prolonged discussion and without a revision of the senate rules it seems very doubtful whether there will be time for all of the pressing business

the veto—were as follows: H. R. 7237, Post Office appropriation bill (because of the provision which continued pneumatic mail tubes); H. R. 9054, Agricultural appropriation bill (because of the provision which fixed the price of 1918 wheat at $2.40 per bushel); H. R. 10358, Legislative, executive and judicial appropriation bill (because of the rider requiring government employees to work eight instead of seven hours a day; S. 2917, to appoint an army chaplain for every 1,200 soldiers; and S. J. Res. 159, extending the time for the relinquishment of government control of short-line railroads.

before the next Congress. The need for a reform of procedure and for some sort of effective and recognized leadership was never more urgent. This is evident from the number and variety of the problems confronting the Sixty-sixth Congress no less than from the failure of the third session of the Sixty-fifth Congress to accomplish what was expected of it.[11]

[11] In connection with this question of legislative procedure an investigation of how Congress spends its time would be very interesting. It is well enough to point out the delays on various measures, but what was done in the meanwhile? An investigator studying the *Congressional Record* with this purpose in view would have an exceedingly tedious and enervating task, but the results would be very valuable. Such a study has been made for the British Parliament for the years 1904–1908 by an anonymous writer, *An Analysis of the System of Government Throughout the British Empire* (Macmillan, 1912). *The Round Table* for September, 1918 (Number 32), contains a very interesting article on this subject, "The Better Government of the United Kingdom."

It may be noted that the Sixty-fifth Congress was in session for 87 per cent of the two years. From March 4, 1917, to March 4, 1919, there were only 96 days out of a total of 728 when Congress was not in session. Its length is exceeded by only one other Congress—the Sixty-third—which had twenty more days.

LEGISLATIVE NOTES AND REVIEWS

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Recent Primary and Election Laws. *Primary legislation* has been enacted recently in thirteen states.[1] Alabama in 1915 adopted a comprehensive direct primary law for the nomination of county and state officers by political organizations which polled twenty-five per cent of the vote cast at the last preceding election.[2] Party tests are to be prescribed by state and county party committees. Contested primary elections are to be tried, not by the courts as is customary elsewhere, but by the state executive committee in the case of candidates for state offices, and by the county executive committee in the case of candidates for county offices, with an appeal to the state executive committee. Another unusual feature is the authorization given to party executive committees to impose assessments or other qualifications upon persons desiring to become candidates in a primary, with the restriction, however, that such assessments shall never exceed four per cent of the first year's salary attached to the office sought, or more than thirty-five dollars in case of fee offices.

In the California primary law of 1916,[3] amending the act of 1913, the most important feature is the provision doing away with separate party primary ballots and substituting therefor a single blanket ballot containing the names of all candidates for nomination arranged in party columns or in a nonpartisan column. The party columns are first arranged in alphabetical order of party names and then are rotated by assembly districts. When applying for a ballot, a voter must declare his party affiliation; whereupon a polling official stamps all other party columns "cancelled," before the ballot is delivered to the voter. For participation in nonpartisan nominations only, of course no

[1] Alabama (1915); Massachusetts (1916); California (1916, 1917); Illinois, Indiana, Iowa, Nebraska, Nevada, New Jersey, Oregon, Tennessee, Washington, and Wyoming (1917).

[2] *General Laws of Alabama*, 1915, no. 78.

[3] *Statutes of California*, 1916, ch. 1; *ibid.*, 1917, ch. 711.

such declaration is required, in which case all the party columns are cancelled.

Massachusetts in 1916[4] amended the primary law of 1913 so as to require party enrollment as a prerequisite to participation in party nominations. A change or cancelation of party affiliation may be made by request in person or in writing to the proper election official, but in order to be effective, this request must be made at least thirty days before the primary. This act was submitted to popular referendum in November, 1916, and approved.

The Nevada primary law of 1917[5] apparently does away with the necessity of getting many signatures in order to have a candidate's name appear on the primary ballot. Ten qualified electors may now file a designation of nomination for any elective office. The person thus designated must be notified, must file his acceptance and pay a fee, varying from twelve dollars and fifty cents, in the case of candidates for the legislature, to one hundred dollars, for candidates for United States senator and any state office. Party enrollment is required except for nonpartisan nominations. The canvass of votes after the polls close is to take place "in the presence of bystanders."

New Jersey in 1917 passed a brief statute[6] providing that "hereafter no person shall be nominated as a candidate for public office in this state or in any county or municipality herein by a convention of delegates, except candidates for electors of president and vice-president." Illinois[7] on the other hand, withdrew from the provisions of the direct primary law the nomination of judges of the superior court of Cook county and the circuit judges throughout the state, and placed their nomination in the hands of county and district conventions of the respective parties. These conventions, however, do not consist of specially chosen delegates but of the ward or precinct committeemen elected as heretofore in a direct primary; in other words, the conventions are merely the county central committees serving as nominating bodies. Each member of the convention has one vote and one additional vote for every fifty votes cast for the party's candidate for governor at the last general election in the precinct.

Tennessee[8] has adopted "a compulsory system of legalized primary elections," for the nomination of candidates for the legislature, gover-

[4] *Massachusetts Public Acts*, 1916, ch. 179.
[5] *Laws of Nevada*, 1917, ch. 155.
[6] *Laws of New Jersey*, 1917, ch. 197.
[7] *Laws of Illinois*, 1917, p. 454.
[8] *Public Acts of Tennessee*, 1917, ch. 118.

nor, railroad commissioners and representatives and senators in Congress; but the law does not apply to presidential electors, to nonpartisan candidates, independent candidates, nor to parties polling less than ten per cent of the vote for governor in the last preceding general election. The administration of this law is placed in the hands of the state executive committee of each party, consisting of two persons elected directly by the voters in each congressional district. These committees constitute the state primary election board for their respective parties for a period of two years. These state boards appoint for each party five commissioners to serve for two years as county boards in each county, and these county boards appoint the polling officials in charge of the voting. For the former requirement of a majority vote to nominate, followed by a second primary if no one received a majority, plurality nomination has been substituted with a second primary only in the case of a tie vote.

The second choice or preferential feature was included in the Alabama primary law, mentioned above, but was stricken from the Washington primary law,[9] and also from the Indiana primary law of 1915.[10] As the Indiana law now stands, the state convention nominates candidates for all officers to be voted for by the voters of the entire state; other officers are nominated by the direct primary.

Nonpartisan nomination and election was provided for in Nevada[11] for all judicial and school officers, of county superintendents of schools in Wyoming;[12] and of judges of the supreme, district and county courts, the state superintendent of public instruction, county superintendents, and the regents of the state university, in Nebraska.[13]

Presidential primary laws have been repealed in Iowa,[14] and Minnesota.[15]

Registration laws have recently been enacted in Alabama, Colorado, Indiana, Louisiana, Massachusetts, and Missouri. In the Alabama act,[16] the governor, state auditor and commissioner of agriculture and industries, acting as a board of appointment, are to designate a registrar

[9] *Session Laws of Washington*, 1917, ch. 71.
[10] *Acts of Indiana*, 1917, ch. 117.
[11] *Laws of Nevada*, 1917, ch. 155.
[12] *Session Laws of Wyoming*, 1917, ch. 59.
[13] *Laws of Nebraska*, 1917, ch. 37.
[14] *Laws of Iowa*, 1917, ch. 14.
[15] *Session Laws of Minnesota*, 1917, ch. 133.
[16] *General Laws of Alabama*, 1915, no. 116.

in each county to serve for a term of four years. The county registrar is required to visit each precinct in the county at least once in two years and to remain there at least one full day to make complete registration of all persons entitled to register. A certificate of registration is issued to each registrant. Registration is permanent unless the voter changes his residence. Provision is made for annual revision of voting lists.

Colorado in 1917 adopted a law for the registration of voters in precincts having a population of from 2,000 to 5,000.[17] Not less than three nor more than twelve election precincts are to be combined into registration districts, for each of which the county clerk appoints a registration commission of three members selected from a list of persons recommended by the county chairmen of the two leading parties. A voter may register any person or persons up to three, or any members of his family, including servants, to any number, if they reside at the same address. Women voters are not required in registering to tell their exact age, but are merely required to state that they are twenty-one years of age or over. New York has been only less chivalrous in this particular by requiring all voters under thirty to state their exact age upon registration, but permits all persons above thirty years simply to declare themselves to be more than thirty years of age.[18]

In Massachusetts the system of "police listing," or preparation of voting lists under police supervision, which had long been in use in Boston, was abolished in 1915,[19] and the preparation of voting lists was placed in the hands of tax assessors. The legislature of 1917 restored police listing for Boston and also extended it to Chelsea.[20] In these cities there is a "listing board" composed of the police commissioner of the city and one member of the board of election commissioners, appointed by the mayor for a one-year term. The voting lists are made up under the supervision of this board with the assistance of the police force.

A Missouri act of 1917[21] provides for personal registration in counties of 150,000 population or over, but this does not apply to cities within such counties, which already have a system of registration enacted in 1909. A "non-partisan," in reality a bipartisan, board of

[17] *Colorado Laws of 1917*, ch. 67.
[18] *Laws of New York*, 1918, ch. 323; New York *Election Law*, §156.
[19] *Massachusetts Public Acts*, 1915, ch. 91.
[20] *Ibid.*, 1917, ch. 106.
[21] *Laws of Missouri*, 1917, pp. 274 ff.

election commissioners is created in each county, consisting of four members, appointed by the governor and senate for a four-year term. Members of these boards are not permitted to hold any other office during their term, and are required to give bonds in the sum of $10,000. A general registration is required in every presidential election year.

Woman suffrage has recently received favorable legislative consideration in eleven states. In Arkansas,[22] women are now permitted to vote in all primaries, provided that, when requested by the judges of election, they will make oath that they are of the "same political faith of the party holding the primary," and that they will give their "moral support to all nominees of said political party." In Nebraska,[23] women have been given the suffrage for officers and questions not specified or designated in the state constitution, except for United States senator or representative. Separate ballots and ballot boxes are provided. In Ohio,[24] women were given the suffrage for, and made eligible as, presidential electors, and members of boards of education. Upon referendum, however, this legislation was defeated. Rhode Island[25] and Michigan[26] have granted presidential suffrage to women. North Dakota has granted the right to vote for presidential electors and for statutory county and other local officers.[27] In Indiana,[28] women were given the right to vote for presidential electors, members of Congress, for all statutory officers and on questions except constitutional amendments. A subsequent decision of the Indiana supreme court has held this act to be unconstitutional.[29] The Indiana legislature of 1917 also adopted a proposed amendment to the state constitution extending full suffrage to women.[30] Favorable action by the legislature of 1919 is necessary before the amendment can be referred to the people.

A special session of the Texas legislature, following the example of Arkansas, granted women the right to vote in primary elections. In Oregon, where women already have complete suffrage, the legislature adopted two memorials to Congress on the subject. One memorial

[22] *Laws of Arkansas*, 1917, Act, 186.
[23] *Laws of Nebraska*, 1917, ch. 30.
[24] *Laws of Ohio*, 1917, p. 566.
[25] *Public Laws of Rhode Island*, ch. 1507.
[26] *Public Acts of Michigan*, 1917, no. 191.
[27] *Laws of North Dakota*, 1917, ch. 254.
[28] *Indiana Acts of 1917*, ch. 31.
[29] *American Political Science Review*, Vol. XII, p. 102 (1918).
[30] *Acts of Indiana*, 1917, ch. 188.

requested favorable action by Congress upon the proposed "Susan B. Anthony" suffrage amendment, and asserted that "in those states where woman suffrage has been granted, it has brought about great improvement in the moral welfare and economic conditions."[31] The other memorial[32] called the attention of Congress to the fact that under existing laws a woman who by state law has equal suffrage with men, by marrying an unnaturalized foreigner, is thereby disfranchised; and that a foreign born woman, however ignorant, who marries a voting citizen of the United States, at once becomes a legal voter. The memorial urges the correction of this "manifest injustice" so that "equal qualifications shall be required of and equal privileges granted to each individual voter irrespective of sex or marital relation in states adopting equal suffrage."[33]

Absent-voting legislation, not previously summarized in these Notes, has been enacted in eight states—Connecticut, Idaho, Iowa, Kentucky, Maryland, Massachusetts, Michigan, and Missouri. The laws of Connecticut[34] Massachusetts[35] and Maryland[36] apply only to persons in military or naval service. The Connecticut statute is to continue in force only "during such time as the United States is at war and until all electors" who are held for military or naval service "during the duration of this war only, have been dismissed or otherwise relieved from such service." In Maryland, absent-voting is permitted only to absentees in military or naval service. The law becomes operative only upon proclamation by the governor suspending the ordinary election laws so far as they are inconsistent with the provisions of this act. Whenever conditions which justify the issuance of such proclamation no longer exist, the governor is required to terminate by another proclamation the suspension of the ordinary laws; whereupon the provisions of this absent-voting law become inoperative. The validity of the act was made contingent upon the popular approval

[31] *Laws of Oregon*, 1917, p. 972, Senate Joint Memorial, no. 12.

[32] *Ibid.*, p. 975, Senate Joint Memorial, no. 15.

[33] The Vermont legislature in February, 1919, passed a bill granting women the presidential suffrage, but this was vetoed by Governor Clement. The veto was based upon an ingenious, but not altogether convincing, argument against the constitutionality of the measure. In 1917, the legislature granted the tax-paying women the right to vote in town meetings. *Laws of Vermont*, 1917, no. 98.

[34] *Laws of Connecticut*, Special Session, 1918.

[35] *Massachusetts Public Acts*, 1918, chs. 293, 295.

[36] *Laws of Maryland*, 1918, ch. 78.

of an amendment to the state constitution, submitted and ratified in November, 1918, empowering the legislature to enact such a law. The Missouri civilian absent-voting law was so amended as to permit voting in absentia in connection with primaries as well as general elections. Special sections were also added applicable to the case of persons absent in military and naval service.[37]

The laws of Idaho and Kentucky follow in general the provisions of the North Dakota absent-voting law, and are not restricted either to civilian or military absentees.[38] Iowa, following the example of Indiana and Wisconsin, amended her absent-voting law so as to permit voting in absentia by persons unable to go to the polls "through illness or injury resulting in physical disability."[39] Michigan extended the privilege of absent-voting to three new classes: (1) regularly enrolled members of any citizen's military or naval training camp held under the government of the United States or the state of Michigan; (2) persons employed upon or in the operation of railway trains in this state; and (3) sailors engaged or employed on the Great Lakes or in the coast trade.[40]

Ballot legislation in Idaho substituted the Massachusetts type of ballot for the party column type.[41] New Mexico, on the other hand, adopted the blanket ballot with party columns and with instructions at the top of the ballot printed in both the English and Spanish languages.[42] Maine has virtually prohibited the use of stickers by providing that they shall not be counted unless used to fill a vacancy or correct an error in the printed ballot.[43] Nebraska adopted a new form of ballot, substituting a sheet not less than five nor more than fifteen inches wide on which the names are printed in not more than three columns for the single column strip which in 1912 measured over eight feet in length. The ballot is to be shortened in 1920 by omitting the names of presidential electors. Voters may indicate their presidential choice by a cross in a circle opposite the names of presidential and vice-presidential candidates. After the election, the governor is required to appoint as presidential electors the candidates

[37] *Laws of Missouri*, 1917, pp. 274 ff.
[38] *Idaho Session Laws*, 1917, ch. 142; *Acts of Kentucky*, 1918, ch. 37.
[39] *Iowa Laws of the 37th General Assembly*, 1917, ch. 419.
[40] *Public Acts of Michigan*, 1917, no. 203, p. 395.
[41] *Idaho Session Laws*, 1917, ch. 93.
[42] *Session Laws of New Mexico*, 1917, ch. 89.
[43] *Laws of Maine*, 1917, ch. 306.

received the highest number of votes.[44] In New Jersey, the preferential ballot law for cities was amended so as to permit several candidates for the same office to file a request "that their names be grouped together and that the common designation to be named by them shall be printed opposite their said names;" in which case the names of such candidates are to be bracketed on the ballot.[45]

With respect to polling places, Texas and Michigan passed laws which provide that in all cases where it is practicable so to do (Texas)[46] or in all cities (Michigan),[47] polling places shall be provided for in schoolhouses, fire stations, police stations or other public buildings.

Double election boards were authorized by legislation in Kansas, Nebraska, New York and West Virginia,[48] in order to relieve polling officials who have been on duty all day during an election of all or a part of the arduous work of counting ballots and making out returns. Kansas, Nebraska and West Virginia provide that in precincts where more than one hundred (two hundred in Kansas) votes were cast at the last preceding election, there shall be two election boards at primaries and general elections. One board, designated as the receiving board, attends to the delivery of ballots to voters, checking names, etc., and has general charge of the polling place during voting. The other board, called the counting board, proceeds to the polling place four hours after the opening of the polls and immediately commences to count and tabulate the ballots already cast in that precinct; meanwhile, the receiving board continues to receive the votes of electors until the polls close. A double set of ballot boxes is provided for, so that counting and voting may go on simultaneously. Kansas also provides that state tickets shall be printed on one ballot and that district, county and township tickets shall be printed on another ballot, with duplicate boxes for each kind. The New York law authorizes the appointment of four additional inspectors of election in precincts in New York City, called "canvassing inspectors." Their duties do not begin until the polls close, and they have complete charge of the canvass and making of returns, the other polling officials taking

[44] *Laws of Nebraska*, 1917, chs. 33, 34.

[45] *Laws of New Jersey*, 1917, ch. 275.

[46] *General Laws of Texas*, 1917, ch. 149.

[47] *Public Acts of Michigan*, 1917, no. 203, pp. 395 ff.

[48] *Laws of Kansas*, 1917, ch. 179; *Laws of Nebraska*, 1917, ch. 32; *Consolidated Laws of New York* (1918), ch. 17, §§ 302, 366-a; *Acts of West Virginia*, 1917, ch. 37.

no part in the count. In the other states having double election boards, the receiving boards assist the counting boards after the closing of the polls.

In meticulous regulation of the counting process, Oregon has perhaps gone further than any other state.[49] During the count, "no one of the [election] board shall be allowed to have at or in his hand any pencil or pen of any kind, except the clerks keeping the official tally sheets and the second judge engaged in numbering and signing his name on the back of each ballot after it is counted and handed to him; and the clerks and the second judge shall have and use only pen and ink. All extra pens and pencils shall be removed from the place where the count is being conducted," except those which are being used by duly appointed watchers outside the guard rail who are permitted to keep private tally.

The use of voting machines has been done away with in Utah by an act which repealed the legislation of 1905 authorizing and regulating their use.[50]

Campaign contributions and expenditures are restricted and regulated in Utah by one of the most carefully drawn and comprehensive laws to be found in any state.[51] Publicity of receipts and expenditures, both before and after primaries and elections, is also included. Expenditures by candidates are restricted to the following amounts: candidates for United States senator, $4000; representatives in Congress, $2000; governor, $3000; presidential electors, $500; state senators, $200; state representatives, $100; and for any other state, county, city or township office, a sum not exceeding fifteen per cent of the first year's salary in the case of offices having a four-year term, and ten per cent for offices having a two-year term. A minimum of $100 is permitted to all candidates. Furthermore, the aggregate of disbursements by the state committee may not exceed a sum equal to 12½ cents for each vote cast in the state for all gubernatorial candidates in the last preceding general election; and a similar limitation is placed upon the expenditures of county committees. Corporations doing business in the state are prohibited from directly or indirectly giving financial assistance in campaigns.

All political advertisements in newspapers and periodicals must be labeled "paid advertisement." All publishers must file sworn state-

[49] *General Laws of Oregon*, 1917, ch. 169.
[50] *Laws of Utah*, 1917, ch. 5.
[51] *Ibid.*, ch. 92.

ments of the ownership of their newspapers or periodicals before publishing political advertisements or articles; and candidates and committees are required, before publishing advertisements, to file sworn declarations of any financial interest they may have in any such publication. The act goes still further and prohibits payment for personal services performed on the day of any caucus, primary, convention or election, except for hiring challengers or watchers. The furnishing of any vehicle, or of any part of the expense thereof, for conveying voters to the polls or registration places, or any part of the way thither, is prohibited, except that two or more political committees may cooperate at joint expense in conveying sick, disabled, aged or infirm voters; but such conveyances shall carry no banner or party worker. Appropriate penalties are also included in the act.

Massachusetts has prohibited the soliciting of money for campaign purposes by or from any public officer or employee of the state, or of a county, city, or town.[52] Delaware now requires political committees to appoint a treasurer to handle all campaign funds.[53] All contributions must be made either to a candidate or to a political committee. Contributions by corporations are prohibited. A list of permissible expenditures, similar to that in force for some years in Pennsylvania, is also included; and the filing of accounts of all receipts and expenditures, when over fifty dollars, is required. Missouri has doubled the amount of permissible expenditures for candidates which is based upon the number of voters in the political subdivision concerned.[54] Tennessee now prohibits the payment of a voter's poll tax by any other person or corporation "for the purpose or with the intent of controlling, persuading, or in any manner whatever influencing" his vote.[55]

Distribution of anonymous printed matter relating to candidates was made unlawful in Missouri.[56] Printed matter must bear the names of the person, or ten members of the group, responsible for its publication. This does not apply, however, to matter published by a newspaper, magazine or journal on its own responsibility and for which it receives no compensation.

Direct legislation. Utah has at last enacted legislation necessary to carry into effect the constitutional amendment adopted in 1900

[52] *Massachusetts Public Acts*, 1918, ch. 146.
[53] *Laws of Delaware*, 1917, ch. 112.
[54] *Laws of Missouri*, 1917, p. 271.
[55] *Laws of Tennessee*, 1917, ch. 6.
[56] *Laws of Missouri*, 1917, p. 272.

authorizing the initiative and referendum.[57] The initiative applies only to ordinary legislation. A measure may be initiated by a petition bearing signatures equal to either five per cent or ten per cent of the vote cast for governor at the last preceding election; in the former case, the measure is first submitted to the legislature; in the latter, the measure goes directly to the people without legislative consideration. Where measures are first presented to the legislature, that body must enact or reject the measure proposed without change. If enacted, the measure is subject to referendum, like any other legislative act. If not enacted, the measure may be submitted to popular vote if an additional five per cent of signatures to the petition is obtained. Legislation enacted under the initiative is subject to amendment at any subsequent session of the legislature.

The referendum may be invoked within sixty days after the final adjournment of the legislature, upon the filing of a proper petition bearing signatures equal to ten per cent of the last gubernatorial vote. The referendum does not apply to laws passed by a two-thirds vote of the members elected to each house of the legislature. All petitions must be signed in the office, and in the presence, of an officer authorized to administer oaths, and that officer must verify all signatures. Publicity pamphlets, issued and distributed by the secretary of state, are authorized. Arguments appearing in this pamphlet for or against measures must not exceed 2000 words, and the cost of printing is borne by the person or group submitting the arguments. Measures "approved by the greatest number of affirmative votes, provided such number be a majority of those voting thereon," are adopted. The act also authorizes the use of the initiative and referendum in towns and cities, and prescribes the procedure to be followed in such places.

Codification of election laws, although sorely needed in many states, seems to have taken place recently only in Michigan. There, an elaborate revised and consolidated election code was adopted in 1917.[58]

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[57] *Laws of Utah*, 1917, ch. 56.

[58] *Michigan Public Acts*, 1917, ch. 203.

Governors' Messages.[1] The solution of problems arising from the war and reconstruction are the principal topics of importance in the messages of the governors to the state legislatures of 1919. The returning soldier, employment, health, Americanization, memorials, prohibition, the militia, the red flag and Bolshevism, military training and the problem of language teaching in the public schools are the dominant questions upon which executives suggested action to the assemblies.

Returning Soldiers. Employment for the returning soldier is proposed by the suggestion that the national government place the soldiers on farms, using reclaimed land and lands made fertile by irrigation. The states in general have advocated this strongly. Governor Robertson of Oklahoma pleaded for greater highway construction and for placing the soldier in this work. The governors of Wisconsin, West Virginia, Michigan and New Jersey advocated means for finding positions for the men; while Governor Larrazola of New Mexico suggested leaving the solution to the state council of defense. The land reclamation proposal was most favorably recommended. South Dakota's executive commended a "soldiers' land bureau," and Governor Smith of New York mentioned this immediate topic of reconstruction as one easily solved by using abandoned farms. The governors of the western states especially saw in this method of reclamation a fortunate means of bringing soldiers to the states and providing work and homes for the native soldiers. The governors of New Hampshire and Wisconsin recommended that the state provide employment on public works for those made dependent by war, for women who were employed temporarily during the war, and for those who are affected by the transition from a war to a non-war basis. Methods for the physical and economic rehabilitation of the returning soldier, in fact, was emphasized by practically every governor, and included the establishment of soldiers' homes and relief funds, free tuition in colleges, preference in civil employment, vocational training, shell shock and tuberculosis treatment, the education of the blind, the creation of a fund to be loaned to soldiers to assist them in starting into business and aid to the dependents of soldiers so long as such dependency exists.

Memorials. Memorials for soldiers were discussed in at least twenty of the governors' messages. Monuments are the most popular form

[1] See *Bulletin* of the Public Affairs Information Service, vol. V, no. 16, February 15, 1919.

of memorials, although several governors took exception to them. Strongest in the support of monuments was Governor Robertson of Oklahoma, who would have "a real memorial, not tinctured with commercialism"—a memorial which "we erected because we wanted to do so, not because we needed it as a utility." The opposite of this view was advocated by the governors of Nebraska and Delaware, where, in the former place, a new capitol building is needed, and in the latter, an addition to the state building is imperative. Governor Campbell of Arizona recommended a war museum as a fitting and worthy memorial. Governor Gardner of Missouri advocated memorials for each soldier and markers for the battle fields of France where Missouri men fought. Governor Beeckman of Rhode Island proposed leaving the subject to a commission; while the executives of Maine, New Jersey and New Mexico suggested the subject of memorials, but left the specific form to the legislatures.

Prohibition. The ratification of the prohibition amendment to the Constitution and the passage of laws for the enforcement of prohibition was an important item in most of the messages. Governor Smith of New York proposed a referendum on the measure. He was almost alone in not advocating a prompt ratification of the amendment. Over twenty governors urged this business as one of the first duties of the legislatures.

Americanization. Americanization by means of education was one of the most important reconstruction subjects, and received attention in many of the messages. Teaching English was mentioned as a solution by Governor Phillip of Wisconsin, while Governor Sleeper of Michigan and Edge of New Jersey advocated industrial schools and practical education. Another means was proposed by Governor Manning of South Carolina by correcting illiteracy. Second only to Louisiana in having the greatest percentage of illiteracy of any state, Governor Manning argued for a constructive program for South Carolina in wiping out this foe of Americanization. Governor Larrazola proposed a law compelling corporations to establish schools for teaching language, reading and writing. A department of Americanization is urged as a necessity in Connecticut by Governor Holcomb. Americanization, he said, "is fundamentally a matter of self defense and self preservation, and not one merely of sentiment or charitable impulse."

Teaching in English in the public schools is complementary to Americanization. Governor Goodrich of Indiana recommended legislation to make all teaching in the public schools in English. He said: "If we are to think as Americans, act as Americans and ever make this truly a nation in heart and soul, it can only be through the teaching of a common tongue to our children." In general, the governors advocated teaching in English only in the elementary or common schools, which would be the first eight grades. As an optional subject in the high schools the German language was not questioned.

Red Flag. The red flag, Bolshevism and the I. W. W. movement were generally discussed with means to rid the states of the menace. The governors of West Virginia, Massachusetts, Minnesota, Montana and Iowa proposed legislation prohibiting the display of the red flag. Governor Stephens of California and Governor Lister of Washington discussed the Industrial Workers of the World. The former insisted that "they must be suppressed with a determined hand" by "stringent legislation." Governor Robertson suggested that: "The ownership of a home is the surest antidote for anarchy and its legitimate spawn, more familiarly known as I. W. W., Bolshevik, and red card socialism." While no definite plan was set forth as a means of stopping this menace, the governors proposed a strengthening of the existing laws and the enactment of new ones to meet the emergency. Among the new laws recommended it was proposed to define the crimes of sedition, disloyalty and sabotage.

Militia. The question of a state militia was discussed by many of the executives. The pith of the subject resolves itself into the question of a force to maintain internal order. State police or constabulary and home guards have been organized in some states to fill the place formerly held by the militia. Governor McKelvie would have the militia only for war purposes and not as a means of defense against anarchy and internal disorder. Governor Smith made the problem of the militia the subject of a special message to the legislature of New York. Until a settlement of the question is made by the national government, little can be done by the states as units. The creation of a state police force was advocated by the governors of Idaho, Oregon, Utah, Washington and West Virginia.

Military Training. Together with the militia comes the question of military training in the schools and colleges. The majority of the

selected by the state convention of the party whose presidential ticket executives advocated some kind of military training, with the emphasis placed upon the physical value to the young manhood of the nation.

War Histories. Reviews of the parts played in the war by the different states make up an important part of the messages. With a view to citing reasons for memorials, health precautions, and reconstructive programs, these histories are a valuable addition to the importance of the addresses. The state councils of defense were eulogized by many of the governors, and appropriations were requested to pay for the work done, and for continuing the institution until the need for it was no longer felt.

Health Measures. As one of the most important reconstruction problems, the health of the returning soldiers and the men of the country received unusual attention. The restriction of venereal diseases and the eradication of tuberculosis are vital questions emphasized by the governors of at least a dozen states. Again, no definite program is mapped out, but a constructive crusade against these diseases was advocated together with active coöperation with the national government in the work already in progress.

Among the proposed recommendations not directly connected with the war were the following:

Constitutional Changes. The governors of California, Kansas, Missouri, Texas and Washington recommended that the question of calling constitutional conventions be submitted to popular vote. In Illinois, where the vote has been taken, the governor asked that steps be taken to provide for the convention. Governor Goodrich of Indiana recommended that all pending proposals to amend the state constitution be rejected; and that certain other amendments be approved by the legislature for reference to the legislature of 1921. The governor of Texas urged the adoption of a constitutional amendment providing independent support for the state university.

Consolidation. The consolidation of state offices in the interest of efficiency and economy and the adoption of the short ballot was recommended by the chief executives of Indiana, Idaho, Minnesota, Nevada, New York, North Carolina, North Dakota and Vermont. A central purchasing agency was advocated in Arkansas, Michigan, Montana and Wyoming.

Budget. The growing support for an effective budget system was evidenced by the recommendations for the establishment or development of a state budget by the governors of twelve states—Arkansas, Colorado, Idaho, Maine, Michigan, Nevada, New Hampshire, North Carolina, South Dakota, Texas, Washington and Wyoming.

Health and Social Insurance. The governors of New York, New Jersey and Wyoming recommended the passage of appropriate laws providing for the establishment of a system of health insurance, and the governors of Indiana and Maine urged the investigation of the whole question of social insurance. The employment of full time health officers by towns, cities or districts was urged in Maine, Michigan, Ohio and Wyoming, and compulsory health supervision, dental and medical examination and treatment of school children, together with physical exercises, playground activities and child hygiene in Kansas, Maine, New Jersey and South Dakota.

Child Welfare. More stringent laws to regulate the hours of employment of children, child welfare and conservation and the health of children were recommended by the governors of Colorado, Minnesota, New York, North Carolina, South Carolina, Texas, Connecticut, New Mexico, Oregon, Rhode Island and South Dakota.

Labor. The uncomfortable disturbances manifest in industrial quarters and the grave questions certain to emerge in the process of reabsorbing the multitudes of men in service led the governors of New Mexico and Oregon to urge the establishment of tribunals of conciliation as between capital and labor, and the governors of South Carolina and Rhode Island spoke with approval of the work of the existing boards in those states.

Blue Sky Laws. The passage or strengthening of the blue sky laws was recommended in Maine, Oregon, Utah and Wyoming.

South Dakota Program. The political program of South Dakota as recommended by the governor under the impulse given to the movement by the powerful nonpartisan league is one of outstanding and notable importance as an experiment in state socialism on a colossal scale. As outlined in the governor's message the planks in this platform include the establishment and operation of a state cement plant;

the operation of the coal mines by the state; the creation of a terminal elevator and flour mills association with authority to buy, sell, store and manufacture farm products; the establishment of an industrial commission with power to establish and operate public utilities; and authorizing the state to engage in building and operating packing houses, flour mills, terminal elevators and stock yards.

Rural Life. The question of rural life problems was given a conspicuous place in many of the executive messages. The various aspects of this question include the encouragement of agriculture, the distribution of farm products, speculation, price control and excessive profits, coöperation among farmers' the establishment of departments of agriculture, the establishment of farmers' bureaus to provide information as to prevailing market prices for farm products, agricultural education, courses in farm management and business organization at state maintained colleges available to farmers, the determination of the question as to what crops are suited to different parts of the state, the decrease of tenantry and increase in the ownership of farms, the settlement of soldiers and civilians on farms and town lots, the promotion of home ownership by the loaning of capital at low rates of interest and partial exemption from taxation, the improvement of rural schools, better communication by roads, proper school supervision, state aid for rural schools and specially trained teachers for rural schools. Two interesting recommendations were made by the governor of Arkansas: (1) the control of malaria in the swamp land districts of the river bottoms so as to secure the settlement of soldiers on the farms; and (2) the purchase of motion picture machines to be used under the supervision of the department of education for exhibition purposes in rural communities.

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JUDICIAL DECISIONS ON PUBLIC LAW

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Congress—Passing Statute over President's Veto—Meaning of "Two Thirds." Missouri Pac. Ry. Co. v. State of Kansas (U. S. Supreme Court, January 7, 1919, 39 Sup. Ct. Rep. 93). It was contended by the plaintiff in this case that the Webb-Kenyon Act was never enacted into law since, after its veto by President Taft, it was passed in the senate by a vote of two-thirds of the senators present which was less than two-thirds of the total membership of that body. It was urged that a statute may be constitutionally passed over the President's veto only by two-thirds of the duly elected members of each house of Congress, a two-thirds vote of a quorum of each house being insufficient for that purpose. It is somewhat remarkable that this question should never before have been raised in the Supreme Court. While asserting that the case might be disposed of by referring to the unvarying practice which has thus far prevailed and which has never required more than two-thirds of a quorum to override the presidential veto, the court proceeded to state its reasons for acquiescing in that view:

First, the "context leaves no doubt that the provision was dealing with the two houses as organized and entitled to exert legislative power," or, in other words, the same body, a quorum of each house, which has power to pass laws has also the power to override a veto by a two-thirds vote. Second, this view is supported by the tenor of the discussions in the Convention of 1787 and also by the construction which has been placed upon similar provisions in state constitutions. Third, the requirement of two-thirds majority of both houses to pass a law over the President's veto is couched in language which is identical with the language of the clause providing that "the Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution" so that the practice in regard to the amending clause is applicable to the veto provision. The court reviews at this point the cases in which amendments have been submitted by a vote of two-thirds of a quorum of both houses instead of two-thirds of the entire

membership. The strongest precedent is, of course, the proposal of the first ten amendments which the journals of the respective houses indicate to have been in each case by two-thirds of the members present. Since this action was taken by a senate and house of representatives containing many members both of the convention which drafted the Constitution and the conventions which ratified it, and since the sufficiency of the vote was not questioned, it is fair to assume that this first construction of the two-thirds requirement coincided with the intentions of those who framed it. The question arose on several later occasions and was always disposed of in the manner just indicated and such action has met with the approval of our most distinguished statesmen. Fourth, the courts of several states have been asked to settle the precise question which is raised in this case in interpreting the veto provisions of state constitutions and their decisions have uniformly held that in the absence of express command to the contrary the two-thirds majority necessary to override a veto is two-thirds of a quorum of each house of the legislature.

Special interest attaches to this case at the present time since press reports indicate an intention upon the part of those opposed to the eighteenth or prohibition amendment to attack its validity on the ground that the vote in the senate in favor of its submission for ratification was a two-thirds vote of the members present and not two-thirds of the full membership of that body. While this question was not raised directly in the case under discussion it is perfectly clear from the opinion of the court that any such attack upon the prohibition amendment would not succeed.

Criminal Law—Kidnapping and Deportation—Jurisdiction of Federal Courts. United States v. Wheeler (U. S. District Court, December 2, 1918, 254 Fed. 611). This prosecution, known popularly as the "Bisbee Deportation Case," followed the deportation of 221 members of the Industrial Workers of the World from Bisbee, Arizona, to the state of New Mexico in July, 1917. The case seems to have been brought in the United States district under the federal statutes because of the local prejudice in favor of the defendants which made their conviction for admitted violations of the statutes of Arizona seem improbable. An indictment composed of numerous counts sought to set forth various violations of the federal statutes but the court failed to find that any offense against the United States had been committed. It was charged that the defendants had conspired to interfere with the rights of such

of the deported men as were subject to the selective draft by forcibly removing them from the districts in which they were registered; but the court pointed out that neither the Selective Service Act nor the regulations promulgated under it required a registrant to remain in his permanent home until drafted, nor did absence from home in any way prejudice the rights of such registrant. The other counts of the indictment seemed capable of being merged in the charge that the defendants had violated section 19 of the Criminal Code of the United States which makes it a felony to "conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States." This section, the court held, should be construed to mean the same that it meant when it was enacted in 1870: namely, " to protect the political rights of citizens of the United States in the several states, and not their civil rights as mere persons, residents or inhabitants," and consequently no offense against the provision in question had been committed. The only provisions of the Criminal Code of the United States which forbid kidnapping are those which have been passed in pursuance of the authority of Congress to legislate against slavery and are, therefore, inapplicable in the present case. The fact that it may not be possible to enforce the laws of Arizona against kidnapping gives the federal courts no jurisdiction of this prosecution in view of the fact that no federal statute has been violated.

Criminal Law—Intent to Violate the Law—Necessity of Overt Act. Proctor v. State (Oklahoma, Criminal Court of Appeals, December 28, 1918, 176 Pac. 771). An Oklahoma statute of 1913 provided under penalty that it should be unlawful for "any person to rent to another or keep a place with the intention of, or for the purpose of manufacturing, selling, bartering, giving away, or otherwise furnishing" intoxicating liquor. The indictment against Proctor failed to charge him with the unlawful possession or furnishing of intoxicating liquor but merely charged the unlawful intention prohibited by the act. The court held the statute void as a violation of due process of law. In order to constitute a crime there must be some omission or commission and mere intention to violate the law in the future unaccompanied by any overt act cannot be made a crime. The legislature has therefore penalized a lawful act. This is in excess of its authority inasmuch as it amounts to an invasion of the constitutional rights of the accused.

Ex Post Facto Law— Statute Admitting Women to Jury Service. People v. Gibson (California, District Court of Appeal, December 18, 1918, 178 Pac. 338). It is held in this case that a law allowing women to serve on juries was not *ex post facto* as applied to one who committed a crime four days before the law went into effect and who was convicted by a jury composed partly of women. The question as to who among the citizens of the state should compose the juries is a purely procedural question and a statutory change in the qualifications of jurors cannot be regarded a change making conviction easier and is not, therefore, *ex post facto* when made after the commission of a crime.

International Law—Immunity of Unarmed Vessel in Public Service of Foreign Sovereign. The Roseric (U. S. District Court, November 22, 1918, 254 Fed. 154). This was a libel against the *Roseric* alleging that it negligently collided with the libelant's barge in New York harbor. The federal district court sitting in admiralty refused to exercise jurisdiction over the *Roseric*. This refusal was grounded upon the fact that the vessel had been requisitioned by the British government for war service and was still in such service. The fact that its officers and crew are still in the employ of the owner is immaterial as is also the fact that the vessel is unarmed. It is in the actual service of a foreign sovereign and is as exempt from judicial process in the courts of this country as would be an English battleship. It is not the ownership of a vessel or instrumentality of a sovereign which exempts it from judicial process in the court of another country, but its actual appropriation to the use of the sovereign. This immunity is not based upon the theory that it may be safely accorded but upon the dignity and independence of the sovereign and the desire not to hamper him in the use of such instrumentalities.

Interstate Commerce—Unlawful Evasion of Presidential Embargo. United States v. Metropolitan Lumber Co. (U. S. District Court, November 30, 1918, 254 Fed. 335). At a time when the railroads, acting under the authority given them by the President through the director general of railroads, had laid an embargo upon the transportation of property with the exception of war supplies, the defendant secured the shipment by the Pennsylvania Railroad of a carload of lumber by causing the railroad to believe the lumber was for military purposes and was covered by government order. This prosecution was brought under the Elkins Act which prohibits under penalty the making or giving of "any undue

or unreasonable preference or advantage" to any person, locality, or particular description of traffic "in any respect whatsoever. . . ." It was urged in defense that the Elkins Act had been intended by Congress to apply only to discriminations or preferences in some way affecting the rates of transportation and should not be extended to cover the acts of the defendant in the present case. The court, however, held the law applicable, pointing out that the terms used are broad enough to embrace a "discrimination in the matter of transportation service, as distinguished from the compensation to be paid for such service." The prosecution cannot be defeated by contending that no statutory penalty has been provided directly applicable to violations of the embargo. The court further declared that the embargo was not illegal because it had not been submitted for approval to the interstate commerce commission, that the government control of railroads did not suspend the operation of the interstate commerce acts, and that the preference given to war materials in the terms of the embargo was a proper exercise of the power to regulate the business of the railroads which the President had assumed as a war measure.

Intoxicating Liquors—Construction of the Webb-Kenyon Act—Liquor on Interstate Trains. State v. Frazee (West Virginia, November 15, 1918, 97 S. E. 604). The defendant rode upon a train passing from one town in the state of Maryland to another town in the same state. To make this journey the train passed through a portion of the state of West Virginia. The defendant was intoxicated and had with him a suitcase containing liquor. He was put off the train at a West Virginia station where he was arrested and finally convicted of violating the prohibition law of that state by bringing into it for personal use more than the amount of liquor which the law permitted. There was no question as to the validity of the state statute inasmuch as the Webb-Kenyon Act divests liquor shipped in interstate commerce for the purpose of violating the laws of any state of its interstate character and protection. It was held, however, that the defendant had not violated the state law. He had not brought any liquor into the state of West Virginia. "Where a person in good faith carries liquor on a train which passes through this state, but does not intend to use or sell, and does not use or sell the liquor while within its borders, and does not remove it from the train, so as to constitute a commingling with the general property of the state," no law of the state has been violated. The court throws out the interesting suggestion that "transportation of liquor

through the state by automobile would more nearly constitute a commingling of such liquor with the property of this state than does transportation by train," but does not suggest any reasons in support of this dictum.

Intoxicating Liquors—Shipment in Interstate Commerce for Personal Use—Construction of "Reed Amendment." United States v. Hill (U. S. Supreme Court, January 13, 1919, 39 Sup. Ct. 143). The Reed amendment to the Post Office Appropriation Act of March 3, 1917, forbade under penalty the sending through interstate commerce intoxicating liquors except for "scientific, sacramental, medicinal, and mechanical purposes," into any state or territory the laws of which prohibit the manufacture and sale of such liquors for beverage purposes. The defendant brought into the state of West Virginia from Kentucky a quart of liquor for his personal use. The statutes of West Virginia prohibit the manufacture and sale of intoxicating liquor, but allow any person to bring into the state not more than one quart of such liquor for personal use within any period of thirty days. He alleged, and it was not denied, that he had not violated the West Virginia Statute, and contended that the Reed amendment was not intended by Congress to prohibit shipments of liquor into states unless such shipments were in violation of state law. The court, therefore, should so construe the amendment as to give effect to this purpose. The court refused to adopt this narrow view of the act. "The meaning of the act must be found in the language in which it is expressed, when, as here, there is no ambiguity in the terms of the law." The court recognized that in passing the Webb-Kenyon Act Congress had made unlawful only those shipments of liquor in interstate commerce which were to be used in violation of the law of the state into which they were sent. But in passing the Reed amendment Congress did not confine itself to such regulations of the interstate shipments of liquors as are in aid of state police regulations; it went beyond that point and imposed restrictions more rigorous in character than those of some of the states which have legislated upon the subject. This it had the right to do by reason of its authority over interstate commerce. That congressional regulation of commerce "may take the character of prohibition, in proper cases, is well established by the decisions of this court;" and it is clear from the decision in case of Clark Distilling Co. v. Western Maryland R. R. Co. (242 U. S. 311, 37 Sup. Ct. 180, 61 L. Ed. 326), in which the Webb-Kenyon Act was held constitutional, that the transportation of liquor in interstate commerce is

one of the "proper cases" for the exercise of the power of complete prohibition if Congress deems that prohibition desirable. Accordingly the restrictions imposed upon such traffic by the Reed amendment do not depend for their validity upon the existence of state laws relating to the subject and such state laws as conflict with its provisions must give away.

Mr. Justice McReynolds filed a dissenting opinion in which Mr. Justice Clark concurred. This opinion declared that the Reed amendment was in no proper sense a regulation of commerce but was a direct interference with the internal affairs of the state. It "opens possibilities for partial and sectional legislation which may destroy proper control of their own affairs by the several states. If Congress may deny liquor to those who live in a state simply because its manufacture is not permitted there, why may not this be done for any suggested reason—e.g. because the roads are bad or men are hanged for murder or coals are dug. Where is the limit?"

Scrutiny of the Reed amendment and the opinion sustaining its validity throws little light upon the problem of classifying this interesting exercise of the commerce power. It differs from the laws Congress has passed to aid the states in the effectuation of their policies regarding the control of the liquor traffic because it overrides those policies in many cases by imposing more rigorous restrictions. It cannot be classified with those acts closing the channels of interstate commerce to products which are deleterious to health or morals such as the Pure Food Acts and the White Slave Act, because it does not pretend to forbid the shipment of liquor in interstate commerce except into states which forbid its manufacture and sale. It neither allows the states a free hand in regulating the introduction of liquor within their borders, nor does it impose the same rule upon the introduction of such liquor into all states.

Intoxicating Liquors—Validity of State-Wide Prohibition under Constitution Providing for Local Option. Ex parte Myer (Texas, Court of Criminal Appeals, October 23, 1918, Rehearing November 27, 1918, 207 S. W. 100). The constitution of Texas contains a provision directing the legislature to enact a local option law. Such a law was enacted in 1876 and has been in force since. This case involved the validity of a recent statute establishing state-wide prohibition of the liquor traffic. The court declared the law unconstitutional. The provision of the constitution above mentioned takes from the legislature all power

to control the liquor traffic in any other way than by local option. To allow the legislature to prohibit the liquor traffic would be to invest it with power to override the constitution. It was argued on rehearing that the prohibition act had been passed as an emergency war measure for the purpose of protecting soldiers stationed in the state from the evil conditions incident to the free sale of intoxicating liquor, and that this emergency called into being legislative power not otherwise available. This argument the court rejected. The federal government has ample authority to pass necessary regulations for the protection of its soldiers from vice without imposing on the states the necessity of violating the provisions of their constitutions. Military necessity creates no power to violate a constitutional restriction, and to hold otherwise would encourage the growth of a military authority which it was the purpose of this country in the European war to suppress. A vigorous dissenting opinion was filed contending that the local option provision of the constitution did not deprive the legislature of the right to use other methods of control since limitations on legislative power, especially the police power, should be invoked only when they are contained in the express words of the constitution.

Labor Disputes—Rights of Employees—Injunctions. Truax v. Corrigan (Arizona, December 14, 1918, 176 Pac. 570); State v. Employers of Labor (Nebraska, November 30, 1918, 169 N. W. 717); Shinsky v. O'Neil (Massachusetts, February 4, 1919, 121 N.E. 790; Smith v. Bowen (Massachusetts, February 4, 1919, 121 N. E. 814). Perhaps no problem with which our courts have to deal presents greater inherent difficulties than that of the conflicting interests and rights of the employers, the employees, and the general public in labor disputes. As a consequence there are few problems, if any, in respect to which there is less judicial agreement either between the courts of different states or between the courts of the same state at different periods of time. The four cases named above reflect in general a point of view in regard to the legal rights and immunities of organized labor which may be said on the whole to be gaining ground in this country.

The precise question raised in Truax v. Corrigan was the constitutionality of the section of the Civil Code of Arizona, 1913, prohibiting the courts from issuing injunctions in labor disputes "unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be de-

scribed with particularity in the application." By virtue of this act the plaintiff's petition for an injunction restraining the defendants from peacefully picketing his place of business and advertising the existence of a strike and the cause thereof to the detriment of the plaintiff's trade and good will was denied. It was urged that the statute deprived the plaintiff of property without due process of law and denied him the equal protection of the law, because it legalized such peaceful picketing which has been held by the federal courts and those of many states to be illegal *per se*. It permitted the invasion of property rights. The court upheld the validity of the statute in question. Picketing which is peaceful, which advertises the causes of dispute between employees and their employers, and attempts by persuasion to induce persons not to trade with the picketed establishment, is not an unlawful invasion of the property rights of the employer. No employer has a right to require his employees to keep secret the fact that he has refused to meet their demands for higher wages or shorter hours. The statute does not legalize all picketing, it does not allude to picketing in so many words, but it makes the test of the legality of picketing or any other activity carried on in the course of a labor dispute the lawful or unlawful manner in which the act is done rather than a conclusive legal presumption that it is unlawful no matter how it is done.

The case of State v. Employers of Labor grew out of labor disputes in the city of Omaha. The business men of the city organized in an effort to secure an "open shop" policy while the labor unions rallied to the standard of the "closed shop." The attorney general of the state acting under the provisions of the anti-trust act forbidding restraints of trade, transportation, or commerce, sought an injunction restraining both sides of the dispute from a long list of specified acts tending to restrain trade, and providing finally that "the question of union or nonunion shops, whether advocated or contended for or against, by any of the defendants herein, be held in abeyance until the close of the present war." The court refused to regard the activities of the employers or employees in behalf of the "open" or "closed " shop as in any way unlawful or properly subject to injunctive process. "Employers may legally agree with each other that they will not adopt the 'closed shop' principle, but will require any man employed to work upon the 'open shop' principle, or may counsel and advise with each other for that purpose. They have as much legal right to refuse to employ members of labor unions as such members have to refuse to work in an 'open shop' and the same legal right to adopt a course of conduct in concert." The

business men were enjoined from conspiring to close or closing their places of business and from refusing to sell coal and building materials to the public. Certain acts of lawlessness on the part of certain of the labor unions were also enjoined.

The case of Shinsky v. O'Neil upheld the right of employees to enter into agreements with their employers imposing upon the employer the obligation to employ only, or to prefer, union men, so long as the union could furnish men. Such an agreement did not violate the rights of a man who had been expelled from a union and was therefore refused employment or discharged by the employers who were parties to that agreement.

But while a closed shop agreement between employers and employees is legal and violates no rights of those not parties to it, it was held in Smith v. Bowen that in the absence of such an agreement a strike to compel an employer to give all his work to the union was illegal. It is not only an invasion of the rights of the employer to determine for himself whom he shall employ but it is an invasion of the rights of nonunion men whose discharge from employment it was the object of the strike to secure.

Suffrage—Extension to Women in Village Elections by Legislative Act. Spatgen v. O'Neil (North Dakota, November 2, 1918, 169 N. W. 491). By a statute of 1917 the legislature of North Dakota granted women the right to vote for presidential electors, certain county officers, all officers of cities, villages and towns (except police magistrates and justices of the peace, and upon all "propositions submitted to a vote of the electors of such municipalities or other political subdivisions of this state." The plaintiff was refused the right to vote at a village election, the ground of the refusal being the alleged unconstitutionality of the suffrage statute. The constitution of North Dakota has the customary provision establishing in general a male suffrage qualification. It further provides, however, that the legislature may extend the suffrage "to all citizens of sound mind and mature age without regard to sex" but requires a state-wide referendum on any such extension of suffrage. It also specifically confers the franchise upon women in school elections. It is admitted that the statute under review was never referred to the voters of the state for approval or rejection. The court upheld the constitutionality of the law. It refused to pass upon the question whether or not the legislature has power to extend the suffrage for all officers and questions not provided for in the state constitution, a ques-

tion which was answered affirmatively in Illinois, Scown v. Czarnecki (264 Ill. 305, 106 N. E. 276) and negatively in Indiana, Board of Election Commissioners v. Knight (Ind., 117 N. E. 565). It based its decision upon the constitutional provision conferring upon the legislature broad powers of control over municipalities. It thereby limited the scope of its decision to the provisions of the act conferring municipal suffrage. In support of its view it alluded to a long line of cases holding that the broad grant of power to the legislature to establish and maintain a school system carries with it the power to extend the school suffrage to women. It also referred to the recent Ohio case which held that a constitutional grant of home rule to cities gave them the power to fix the qualifications of municipal electors, State v. French (Ohio St., 117 N. E. 173). In various cases it has been held that the power of the legislature over municipalities is sufficient to warrant a deviation from the qualifications of voters set up by the constitution in providing for elections upon questions of public improvements. It follows, then, from these precedents and authorities that the legislature of North Dakota as an incident to its plenary power over minor municipalities may extend to women the right to vote in elections of local officers not provided for in the state constitution.

Taxation—For Purposes Other than Revenue—Congressional Suppression of Traffic in Narcotics. Hughes v. United States (U. S. Circuit Court of Appeals, October 28, 1918, 253 Fed. 543); Fyke v. United States (U. S. Circuit Court of Appeals, December 10, 1918, 254 Fed. 225). Both of these cases raised the question of the constitutionality of the Harrison Narcotic Act, December 17, 1914. The first section of the act requires all dealers in narcotics to register with the collector of internal revenue and pay a tax. The second section prohibits the sale or barter of the drugs except upon the written order of the person to whom they are sold made upon blanks furnished by the commissioner of internal revenue. It was alleged that this second section was designed to suppress the drug habit and not to raise revenue and was, therefore, a police regulation not within the scope of congressional authority. In both cases the court upheld the validity of the law. It was held a necessary regulation incident to the power to tax. "The difficulties of subjecting the traffic to excise and preventing frauds on the revenue are obvious, and it was competent for Congress to bring the traffic into the open. Revenue from sellers, as provided for by that section (the first), could manifestly not be collected unless Congress had the power

to, and did in fact, punish the sale of the prohibited drugs by all persons except when made in conformity to the act." Since the law bears a substantial relation to the raising of revenue the court, in the Hughes case, disclaimed any right to inquire into any other motives which Congress might have had in enacting the law.

FOREIGN GOVERNMENTS AND POLITICS

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The Russian Soviet Constitution. Among the results of the recent great war will be the appearance of a number of important constitutional documents. These will include new constitutions for existing states, such as Russia and Germany, new constitutions for newly-created states, such as Poland and the Slav republics, and an attempt to establish at least a partial constitution for a world confederation. The first of these documents to be published, and one which contributes many new devices in government and new ideas in political theory, is the Fundamental Law of the Russian Socialist Federated Republic, adopted on July 10, 1918, by resolution of the Fifth All-Russian Congress of Soviets. This document assembles and coördinates the various declarations of rights and rules of government put forward after the establishment of the Industrial Republic in Russia in November, 1917. This fundamental law became effective when promulgated by the All-Russian General Executive Committee, and provides that it shall be published by all organs of the soviet government, posted in prominent places in all soviet institutions, and studied in all schools and other educational institutions.

The Russian constitution is somewhat longer, in its English translation, than the Constitution of the United States. It is divided into six articles, seventeen chapters, and ninety sections. The articles are arranged as follows: I. Declaration of Rights of the Laboring and Exploited People; II. General Provisions (dealing with property, labor, education, church and citizenship); III. Construction of the Soviet Power (framework of central and local government); IV. Right to Vote; V. Budget; VI. Coat of Arms and Flag.

About one-third of the document is concerned with the general principles upon which the soviet republic is based, and it is in this respect especially that the Russian state strikes out along new lines. The constitution provides for the transfer to national ownership of private property in land, forests, minerals, water power, agricultural implements, and banks. Control by the workmen over the processes of

manufacture and transportation is established, as a step toward complete transfer of such utilities to the soviet republic. Universal obligation to work is created; and workers are to be armed under a system of compulsory military service, but nonworkers are to be disarmed to prevent the restoration of the capitalist system.

The constitution is unique in that it lays down certain principles of foreign policy. It opposes secret treaties, urges peace without annexations or indemnities, disapproves the exploitation of colonial populations, and favors the independence of Finland, the right of Armenia to self-determination, and the withdrawal of troops from Persia. It approves the annulment of foreign loans, at least "until the final victory of the international workers' revolt against the oppression of capital." All peace treaties must be ratified by the All-Russian Congress.

The new Russian state is a federal union of an extremely loose type, being scarcely more than a confederation of local republics. Each local soviet, urban or rural, is authorized to organize itself as local conditions make desirable, to combine with neighboring local units into autonomous regional unions, and to decide for itself whether or not, and on what terms, it wishes to participate in the federal union. This leaves to the local units powers unheard of in other federal states, in which the decision in case of dispute between central and local agencies is decided by an organ of the central government, and in which the conditions on which local units become members of the federal union are definitely prescribed. Sovereignty in the Russian state, therefore, lies in the local soviets, or committees of delegates chosen by the local industrial, military, and professional groups, and secession of the local units from the federal union is definitely permitted.

When compared with the usually accepted ideas of political organization, the Russian constitution offers many points of interest. To the student of government, the survey of any constitution centers around: (1) the method of its creation; (2) the method provided for its amendment; (3) the framework of government established, including the subdivision of governing machinery into executive, legislative, and judicial organs, and into national and local organs; (4) the powers of the various organs of government; (5) the civil liberties guaranteed to individuals against governmental encroachment; (6) the provisions concerning citizenship, or membership in the state; and (7) the provisions concerning suffrage, or individual share of political authority.

An analysis of the Russian constitution along these lines gives the following results:

1. The Russian constitution was adopted by a general congress of representatives from the local committees. It was not conferred upon the people by a ruling monarch, nor referred to the local units for ratification, nor submitted to a popular referendum. The national assembly that created it was of revolutionary origin.

2. Section 51 provides that the amendment of the fundamental principles of the soviet constitution is under the sole jurisdiction of the All-Russian Congress, the body that created it.

3. The framework of government created by the constitution is relatively simple. Those who work elect delegates to the local soviets, the number of deputies corresponding to the population—in cities one for every thousand inhabitants, in smaller places one for each hundred. The local soviets, which meet weekly or bi-weekly, choose executive committees and send delegates to assemblies for larger areas—rural districts (*volost*), counties (*uyezo*), and provinces (*gubernia*). There is also a regional (*oblast*) assembly, of representatives from the city and county assemblies. Finally there is the All-Russian Congress, or assembly of soviets, constituted by delegates from the city soviets and provincial assemblies, or, if the provincial bodies are not convoked, from the county assemblies. It will be noted that the delegates from the rural areas to the national congress are chosen indirectly; while the city soviets not only elect delegates directly but are also represented in the provincial assemblies.

The All-Russian Congress of soviets must meet not less than twice a year. With one delegate for every 125,000 population, it contains about 1400 members, an unwieldy body for transacting business. It therefore elects an executive committee of not more than 200 members, which exercises the supreme power of the republic between meetings of the All-Russian Congress. It directs and coördinates the work of the local soviets, passes laws, and appoints and controls the council of commissars, or heads of administrative departments. Of these there are seventeen, including the usual cabinet departments, though the portfolios of social welfare, national supplies, state control, and national economy are somewhat unusual. Each commissar is aided by a committee, the members of which are appointed by the body of commissars. No judicial department is provided for. The government is thus of the cabinet type, without a distinct premier, the cabinet being responsible, individually and collectively, to the All-Russian Executive Committee, or parliament, which in turn is responsible periodically to the All-Russian Congress, or national convention.

4. The distribution of powers gives to the central government authority over foreign policy, boundaries, both interior and exterior, cession of territory, admission of new members and secession, weights, measures, and money, loans and commercial treaties, taxation and the budget, the army, judicial organization and procedure, and citizenship. The local soviets are authorized to carry out the orders of the higher organs, to raise the cultural and economic standards of their people, and to decide questions of local importance. In finance, the local soviets levy taxes for local needs, and if necessary apply for subsidies from the central government. Local finance estimates must be approved by the central government, and funds received from them must be used for the purposes specified. The All-Russian Congress or the All-Russian Central Executive Committee determines what matters of income and taxation belong to the state budget and what belong to the local soviets; they also set the limit of taxes.

5. Civil rights provided for include separation of church and state and of church and school, freedom of conscience, with the "right of religious and irreligious propaganda accorded to each citizen," freedom of expression, including the socialization of the press and the free circulation of printed material, freedom of assembly, including the furnishing of halls, with light and heat, by the government, right of peasants and workers to unite and organize under government aid, right to free education, right of workers to bear arms, right of aliens to seek refuge from political or religious oppression, and the right of freedom from discrimination because of racial or national connections or of class distinctions. In comparison with the civil liberties with which we are familiar, the Russian Bill of Rights omits the guarantees concerning habeas corpus, methods of trial and punishment, and the rights of private property.

6. The local soviets are authorized to grant citizenship without complicated formality to all persons who work.

7. The right to vote and to hold office is conferred upon persons of both sexes who have reached the age of eighteen, who are engaged in labor that is productive and useful to society, or who are employed in the soviet army or navy, or who have lost their capacity to work. Resident aliens possess full political rights if engaged in labor. The following classes are excluded from the suffrage: persons who employ hired labor for profit or who have private incomes without working, private merchants or brokers, clergy, agents of the former police, members of the former dynasty, persons under guardianship or who

have been legally declared mentally deficient, and persons who may be temporarily deprived of their political rights by soviet action. Elections are held at such times as the local soviets determine, and delegates chosen may be recalled at the pleasure of the soviet, which thereupon calls a new election. The principle of instructed representation is apparently followed, delegates chosen being expected to carry out the wishes of their constituents under penalty of recall.

Aside from the socialization of property, the most fundamental departure of the system, several experiments in political organization are attempted in the new constitution. Among these are the restriction of political rights to those engaged in productive labor, and the basing of representation on industrial groups, rather than on territorial units. These provisions are interesting, since they recognize the economic foundation of present day states and the importance of making political organization correspond to the actual conditions of social organization. Similar manifestations may be found in the political activities of labor unions, especially in England, in the rapid spread of the principle of self-determination in industry, and in the rise of the theory of guild socialism as a basis for a revised conception of sovereignty. However these new doctrines may be considered, they at least compel a revaluation of our former political concepts.

How the Russian constitution, in case it survives, will work in actual practice remains to be determined. No constitution ever works out in just the way that its founders expected. Old traditions and institutions reappear in new forms, and unforeseen conditions compel growth along lines not originally anticipated. To this general process the new constitution of Russia will be no exception.

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Proposed Administrative Reorganization in Great Britain. We may still assume that the principal political effect of the war will be the enlargement of popular control over the agencies of government. Second only to this, however, is likely to be the development of more economical and efficient administration. The exigencies of war have put the older administrative organization and procedure in the various countries to the supreme test; great tasks of administrative reconstruction have been carried out with an expeditiousness unknown in times of peace; the experience of even a few tense years has demonstrated the permanent value of many of the newer arrangements;

unprecedented fiscal burdens will cause it to be more than ever insisted upon that for every dollar spent full value shall be received. Unhappily, popular government is not noted for securing administrative efficiency; considered merely as the controlling force in administration, autocracy has not a few advantages over it, at least of a technical, mechanical sort. Of itself, the recent doubling of the electorate in Great Britain would not, for example, be expected to improve the nation's administrative system in any way. On account, however, of the very unusual circumstances that have recently existed, and must long continue, we may reasonably expect that the popularization of government and the betterment of administration will for once go along together.

Indicative of the trend toward improved administration is an interesting state paper published within recent months in Great Britain under the title, "Report of the Machinery of Government Committee of the Ministry of Reconstruction (Cd. 9230)." The machinery of government committee was appointed in July, 1917, to "inquire into the responsibilities of the various departments of the central executive government, and to advise in what manner the exercise and distribution by the government of its functions should be improved." The committee's members included, among others, the secretary of state for India (Mr. Montagu), Sir Robert Morant, and Mrs. Sidney Webb, with Lord Haldane as chairman; and, save at one or two minor points, its report was concurred in unanimously.

The document falls into two parts. The first deals with the general principles of executive and administrative organization; the second takes up, in more detail, the ten main branches or divisions among which, in the committee's judgment, the work of administration ought to be allotted. Before discussing administration *per se*, however, the committee considers at some length the present and future status of the cabinet. First it enumerates the essential functions of that body, as follows: (1) final determination of the policy to be submitted to Parliament; (2) supreme control of the national executive in accordance with the policy prescribed by Parliament; and (3) continuous coördination and delimitation of the activities of the several departments of state. For the proper performance of these functions certain conditions are declared to be desirable: (1) the cabinet should be much smaller than in the pre-war period, perhaps twelve, though preferably ten; (2) it should meet frequently; (3) it should be supplied, in the most convenient form, with all the information and material neces-

sary to enable it to arrive at expeditious decisions; (4) it should make a point of consulting personally all of the ministers whose work is likely to be affected by its decisions; and (5) it should have a systematic method of making sure that its decisions are effectively carried out by the several departments concerned.

The committee considers that the war cabinet of the past two years will not be adequate under peace conditions, but that certain of its better features ought to be preserved. One of these features is its small membership; another is the practice of appointing a secretary charged with the duty of collecting and putting into shape the cabinet's agenda, of providing the information and material necessary for its deliberations, and of drawing up records of the results for communication to the departments concerned. Much emphasis is laid upon the desirability of more intelligent and systematic investigation as a basis for governmental action, and in this connection it is strongly urged: (1) that in all departments better provision shall be made for research, inquiry and reflection before policy is defined and put into operation; (2) that for some purposes the necessary research and inquiry shall be carried out or supervised by a department of government specially charged with these duties, but working in the closest collaboration with the administrative departments concerned with its activities; (3) that special attention shall be paid to the methods of recruiting the personnel to be employed upon such work; and (4) that in all departments the higher officials in charge of administration shall have more time to devote to this portion of their duties.

The report gives careful consideration to the various bases on which executive and administrative functions may be distributed among the departments, to the conditions of coöperation among departments, and to the number of departments that may advantageously be maintained. The best basis of distribution is held to be the nature of the service rendered, not—as has sometimes been proposed—the persons or classes to be dealt with. "It is impossible," says the committee, "that the specialized service which each department has to render to the community can be of as high a standard when its work is at the same time limited to a particular class of persons and extended to every variety of provision for them, as when the department concentrates itself on the provision of one particular service only, by whomsoever required, and looks beyond the interests of comparatively small classes." As to interdepartmental coöperation, it is held that final and water-tight divisions of business among departments

cannot be made under the complex conditions of modern government, and that, accordingly, the principle of distribution mentioned must be reënforced, and if necessary qualified, by increased coöperation of the departments one with another, barring mere duplication. It is urged that in the organization of individual departments special importance should be attached to securing proper consideration of proposals for expenditure, unimpaired ministerial responsibility, coöperation with advisory bodies in matters that bring the departments into contact with the public, and the extended employment of qualified women.

Finally, the committee arrives at the conclusion that all government business can advantageously be made to fall into one or another of ten main divisions, as follows: finance, national defense, foreign affairs, research and information, production, employment, supplies, education, health, and justice. It does not mean to say that there should be ten ministerial departments and no more; indeed it suggests that the division of production might very properly be organized in at least three ministries, i.e., commerce and industry, agriculture and forestry, and fisheries. But if its ideas were to be carried out the present number of ministries would be notably reduced and those that survived would become substantially coördinate, on the plan of the ten executive departments in the national government of the United States. Already when the report was submitted the government had decided upon the creation of new ministries in two of the spheres of administration named. A bill for the establishment of a ministry of health was introduced by Dr. Addison on November 7; and five days later the same official announced in the house of commons the gradual transformation of the ministry of munitions into a ministry of supplies. A bill for a ministry of ways and communications has also been presented. The creation of a ministry of justice has been advocated in some quarters; but the committee, feeling that this would involve an unnecessarily sweeping reallocation of duties, recommended a plan under which the functions of the central government in relation to justice would be divided between the lord chancellor's department and the department of the home secretary, with a view mainly to relieving the lord chancellor of his present excessive burdens.

In conclusion, the report emphasizes the danger that "a more efficient public service may expose the state to the evils of bureaucracy, unless the reality of parliamentary control is so enforced as to keep pace with any improvement in departmental methods." In this con-

nection the committee alludes to the recent recommendations of the select committee on national expenditure, which aim at restoring and strengthening parliamentary control over the country's finances; and it speaks with approval of the suggestion that Parliament should maintain an increased watchfulness over the activities of the departments by means of a series of committees specially constituted for the purpose, and each exercising surveillance over a particular branch of administrative work. F. A. O.

Home Rule for India. The epoch-marking proclamation issued by Queen Victoria in 1858 announced to the people of India that they were to be admitted freely and impartially to political office. The autocratic bureaucracy of foreigners, culminating in the régime of Lord Curzon, when only about 4 per cent of the members of the Indian civil service were natives, was hardly a fulfillment of the spirit of this proclamation. Nor did the peoples of India consider it such. The spirit of unrest finally took shape in the Indian National Congress, founded in 1885, to give expression to the ideas of the educated classes; and this body soon came to be regarded as the unofficial Indian parliament. Each year it brought forward a list of ills which the government of India as then organized could not hope to remedy.

On the fiftieth anniversary of Queen Victoria's proclamation, Edward VII's government announced that the time had come to extend republican institutions, and to give satisfaction to the political aspirations of important classes—aspirations springing from ideas that had been fostered by British rule. The Morley-Minto reforms, embodied in the Councils Act of 1909, attempted "to blend the principle of autocracy, derived from Mogul emperors and Hindu kings, with the principle of constitutionalism derived from the British crown and parliament." These reforms, although well received, increased rather than alleviated the unrest, for they gave the peoples of India a larger consultative voice in Indian affairs without making their voice count. Lord Morley openly declared that he had no desire to establish a parliamentary system in India. Fresh agitation arose, and with the advent of a new viceroy fresh hopes were inspired. In August, 1911, Lord Hardinge proposed reforms, urging "that the provinces be gradually given a large measure of self-government, until India should consist of a number of administrations, autonomous in provincial affairs, with the government of India above them all, possessing the power to interfere in cases of misgovernment, but

ordinarily restricting its functions to matters of imperial concern." Such a program provoked immediate and bitter opposition from the civil and military bureaucracy. It struck at the civil service, whose members enter automatically into the viceroy's executive council somewhat as members enter upon chairmanships under the seniority rule in Congress, and who could thus oppose a solid resistance to all reforms injurious to their traditions and interests.

Far from fanning the embers of discontent, the outbreak of the world war stirred all India to a remarkable demonstration of loyalty. The services of every corps maintained by the twenty larger native states were placed at the immediate disposal of the government; and by the beginning of 1915 over 200,000 Indian troops were fighting on all fronts from East Africa to Flanders. At the same time, educated Indians began to ask what results this great war against autocracy would have for them; for as the Bishop of Madras put it, "England could not fight for one set of principles in Europe and apply another in India." The Government of India Act of 1915, a useful but colorless codification of previous legislation, gave no promise of substantial changes.

At the annual session of the Indian National Congress in Bombay in 1915, a committee was authorized to frame a scheme for Indian self-government within the British Empire and to confer with a committee of the All-Moslem League with a view to joint action. The outcome was a complete agreement. In the following year 19 of the 27 elected members of the Indian legislative council presented a memorandum to the new viceroy, Lord Chelmsford, asking that India's position after the war be changed from one of subordination to one of comradeship. This memorandum embodied many radical reforms, such as equal representation on the executive council, autonomous provincial governments, and immediate local self-government. These proposals were seized upon by the extremists of the National Congress and the Moslem League, and at the joint convention of these bodies at Lucknow in December, 1916, self-government for India was declared to be no longer a distant goal, but an immediate aim. Both parties hailed the *rapprochement* between the National Congress and the Moslem League as the first visible sign of the birth of a united India. Mrs. Besant was elected president of the next Indian National Congress; whereupon she started the inflammatory campaign for the Home Rule League which ultimately brought her into seclusion under the Defense of India regulations.

Great Britain was awake to the situation. In the imperial war cabinet which met in March, 1917, Sir S. P. Sinha, an Indian member of the viceroy's executive council, and the maharaja of Bikaner, representing the ruling chiefs, were included, and Lloyd George in his Guild Hall speech asserted that the loyal myriads of India should no longer be treated as subject races. With the publication of the Mesopotamia report came the realization that the disaster of General Townshend's expedition was due to a great extent to the faulty administrative system of India. Action could be no longer delayed. Mr. Austen Chamberlain, secretary of state for India, resigned, and on August 20, his successor, Mr. E. S. Montagu, gave in the house of commons what has been termed "the most momentous utterance ever made in India's chequered history." He announced the government's policy to be "an increasing association of Indians in every branch of service, and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire." The following winter he went to India in person to confer with Lord Chelmsford and to ascertain the actual conditions. After interviews with scores of Hindu and Moslem delegations, the reading of countless memorials and petitions, and personal consultations with hundreds of officials, both British and Indian, the now famous Montagu-Chelmsford report was submitted. This document of some three hundred pages, in two parts, first discusses the background and the existing conditions, and then sets forth the proposals of reform.

Even an outline of these proposals is impossible here, but the four great principles laid down are: (1) there shall be popular control in local bodies, and, as far as possible, independence of outside control; (2) in all provinces except Burma and the Northwest Frontier there shall be a legislative council, mainly elective, with some effective control over the executive authorities at once, and with increased control as conditions permit; (3) the government of India must remain responsible to Parliament and supreme over the provinces in essential matters during the changes, but in the meantime the legislative council shall be enlarged, made more representative, and given greater opportunities of influencing the government; (4) as these changes take place, the control of Parliament and of the secretary of state over the government of India and the provincial governments shall be relaxed.

A principal difficulty is the creation of an electorate capable of at least a rudimentary exercise of political judgment. The report sug-

gests a committee of five, two to be natives of India, to work this out on the basis of a broad franchise, with such communal and special representation as may be necessary. Such a committee, in connection with another on the allocation of governmental functions, is now at work in India under the general direction of Lord Southborough. The report also suggests several changes in the machinery of government: another Indian member to be added to the viceroy's executive council; substitution for the present legislative council of a council of state (partly elected and partly nominated) of fifty members, and an Indian legislative assembly of about one hundred members, two-thirds to be elected and one-third nominated; and for the native states a council of princes, as a permanent consultative body. It is also suggested that an inquiry into the operation of these plans be made after five years, and that periodic commissions be appointed by Parliament every twelve years to review the working of the new system as a whole. The report especially urges the increase of the native element in the public services.

Naturally, these fundamental proposals, affecting as they do all classes of people from rajah to ryot, have encountered determined opposition both in Britain and in India. Of the 315,000,000 people in India it is asserted that 95 per cent are not fitted for responsible government. In a country where politics cannot be separated from religion, where the caste system condemns millions of "untouchables" to a life of degradation, how can any fair suffrage scheme be devised? Why impose a novel, "diarchic" system of government upon the provinces of India? Yet in spite of such criticism almost every member of the house of commons who has thus far taken part in the debates has advocated a further extension of Indian participation in the government. The verdict of the house of lords, although more critical, was on the whole favorable. Indian opinion is divided. Both the National Congress and the Moslem League have voted the proposals disappointing, while the mixed legislative council at Calcutta by an almost unanimous vote declared the proposals "a definite advance toward the progressive realization of responsible government."

In so far as the question of India entered into the British elections of last December, it is manifest that the course mapped out by the coalition government has the backing of the electorate; and with the announcement of the new cabinet no appointment aroused greater surprise and interest than that of Sir S. P. Sinha as under-secretary of state for India. This statesmanlike Hindu, who has risen by

merit alone from the obscurity of an Indian village has also served as one of the delegates representing India at the Peace Conference at Paris. He has shared this signal honor with the maharaja of Bikaner, his colleague in the imperial war cabinet.

The effect of Britain's vision and new policy in Indian affairs is evidenced by the speech made by the maharaja of Gwalior at the close of the conference of the ruling princes and chiefs at Delhi in January, 1919. Referring to the reform proposals, he declared that they would bring in their train enhanced loyalty and contentment in India, and that the appointment of Sinha as under-secretary "furnished an example of true insight, great political imagination, and genuine honesty of purpose."

GRAHAM H. STUART.

University of Wisconsin.

NEWS AND NOTES

Personal and Miscellaneous

EDITED BY FREDERIC A. OGG

University of Wisconsin

By vote of the executive douncil, the next annual meeting of the American Political Science Association will be held at Cleveland, Ohio, during the last week of December. The American Historical Association will hold its annual meeting at the same time and place.

The auditing committee appointed by the executive council at its Baltimore meeting in December submits the following report:

"We, the undersigned, have examined the check book, bank statements, and accounts of the American Political Science Association for the year 1918 and found them correct."

Robert C. Brooks,
Clyde L. King,
Charles G. Fenwick.

Dr. Leonard P. Fox, of the department of history and politics at Princeton University, has been appointed assistant professor of political science at the Carnegie Institute of Technology.

President Frank J. Goodnow, of Johns Hopkins University, has been named as a member of a commission to frame a constitution for Poland. President Goodnow was constitutional adviser to the Chinese republic when he was elected to the presidency of Johns Hopkins in 1913.

Professor Chester Lloyd Jones, of the University of Wisconsin, has been appointed commercial attaché at Madrid. He will be on leave of absence until September, 1920.

Professor Raymond G. Gettell, of Amherst College, will give courses in political science at Cornell University during the coming summer session.

Professor O. C. Hormell, of Bowdoin College, is on leave of absence for a period of six months. He has been assigned to the department of citizenship in the educational service of the Y. M. C. A. in France.

Mr. William C. Dennis has received an appointment as legal adviser to the Chinese government.

Mr. Dana G. Munro, whose book *The Five Republics of Central America* was published recently by the Carnegie Endowment, has been appointed assistant regional economist for Latin America.

Professor Ernest Barker, of Cambridge University, England, will spend next year at Amherst College. He will offer courses in history and political science.

Dr. William Roscoe Thayer, president of the American Historical Association, delivered a series of lectures at Brown University early this year on "The Doubts and Ideals of Democracy."

Professor C. C. Wheaton, of the law school of Louisiana State University, has been appointed to a professorship of law at the University of Cincinnati. He will be succeeded at Louisiana by Mr. Ira S. Flory, a practicing attorney in New York City.

Professor Jeremiah W. Jenks, of New York University, was assistant to the chairman of the aircraft production board on labor questions during the second half of 1917. In 1918 he was engaged on a special mission to Nicaragua as umpire of the Nicaraguan High Commission, on appointment of the department of state, in connection with the financial and monetary rehabilitation of Nicaragua.

Dr. A. B. Wright, professor of political science at the University of Pittsburg, has been appointed acting dean of the School of Economics.

Mr. Homer Talbot formerly in charge of the bureau of municipal information of the League of Kansas Municipalities, has accepted the directorship of the state bureau of municipal information maintained by the New Jersey League of Municipalities. Dr. Edward T. Paxton, formerly of the University of Texas, who acted as temporary secretary of the New Jersey league has returned to the Philadelphia bureau of municipal research.

Mr. Harrison Gray Otis, secretary of the City Managers Association, has joined the staff of the American City Bureau and will be in charge of a new city managers' service bureau which has been established with a view to assisting municipalities in the adoption of the city manager form of government.

The American Civic Association, E. E. Marshall, acting secretary, has begun the publication of a bulletin entitled *Civic Comment*, in clipping sheet form, to be issued from time to time as occasion demands.

The Baltimore alliance of charitable agencies, in coöperation with the Woman's Civic League, has begun the publication of a bulletin *City and State* (first issue, February, 1919), succeeding *The Town*, formerly published by the latter organization.

Major H. S. Person, director of the Tuck School of Administration and Finance of Dartmouth College, has returned from Washington, where, as an officer in the Ordnance Reserve Corps, he dealt with problems of organization in the various army corps. The most important single piece of work in his charge was a complete reorganization of the Signal Corps.

Dr. Demetrius Kalopothakés, who was for many years connected with the American legation at Athens, has been in the United States in recent months. He delivered addresses at Harvard and the Massachusetts Institute of Technology on "Greece in the Peace Conference." Dr. Kalopothakés was long a correspondent of the London *Morning Post*.

The faculty of the Harvard Law School has announced the award of the Ames Prize to Professor Ernst Freund, of the University of Chicago, for his *Standards of American Legislation*. The prize, consisting of a bronze medal and a sum of not less than $400, is awarded for the most meritorious law book or legal essay written in the English language and published not less than one nor more than five years before the award. In 1902 the prize was awarded to John Henry Wigmore, dean of Northwestern University Law School; in 1906 to Professor Frederic William Maitland of the University of Cambridge, England; in 1910 to John William Salmond, Solicitor-General of New Zealand; and in 1914 to Samuel Charles Weil of San Francisco.

Professor A. R. Hatton of Western Reserve University is giving the whole of his time as field agent of the National Short Ballot Association. During the current year he will spend twenty weeks under the auspices of the American City Bureau aiding chambers of commerce in inaugurating civic programs, involving the adoption of the commission-manager plan of city government. He has recently aided the citizens' committee at Memphis, Tennessee, in drafting a commission-manager charter with the unusual feature of a council, or commission, of twelve, in recognition of the fact that Memphis is a larger city than any that has heretofore adopted the plan.

The mayors of the cities of Missouri at their annual convention in January passed resolutions asking that a constitutional convention be called, and created a new constitution league. The Civic League of St. Louis recently organized a state constitution committee which has presented a formidable list of reasons for the adoption of a new constitution. The present constitution dates from 1875. Among the reasons assigned are the restrictions which the constitution places upon municipal home rule, the unsatisfactory nature of the provisions for the judiciary, the need of tax reform, and the desirability of introducing the short ballot.

The national committee of one thousand for constructive immigration legislation, Dr. Sidney L. Gulick, secretary, has prepared an elaborate bill for the regulation of immigration and promotion of Americanization. The committee proposes to carry on a nation-wide campaign in the interest of sane immigration restriction.

The department of political science at the University of Minnesota has under advisement the establishment of a bureau of state and municipal research.

Boston University has recently been endowed with a "chair of United States citizenship," by a philanthropist who states his purposes as follows: "My idea is to develop a body of leaders especially trained in United States citizenship who will go out through this country as educators, statesmen, financiers, business men, and the like, to upbuild the foundations and bulwarks of our citizenship intelligently and patriotically, so that the masses of the people may come to have a generally disseminated knowledge of the value, importance, and distinctiveness of their United States citizenship."

Rhode Island has witnessed in recent months a renewed agitation for the abolition of the property qualification for voting. Aside from four southern states which have alternative property and educational qualifications, Rhode Island is the only state in which the property qualification persists. The only reason for its retention there is a partisan one, arising from the advantage accruing to the Republicans from disfranchising the nonpropertied elements.

Governor Stephens of California has appointed a committee on efficiency and economy which is expected to report a plan of reorganization of the state administration. The California taxpayers' association has reported a scheme of reorganization which provides, among other things, that all department heads and chiefs of divisions shall be appointed by the governor and shall be directly responsible to him. Instead of a government consisting of approximately 120 agencies of all kinds the plan offers a government of twelve compactly organized departments.

The report of the Oregon consolidation commission, for which Professor J. M. Mathews of the University of Illinois acted as expert investigator, recommends the organization of the state administration into ten departments, in addition to the governor, as follows: general adminstration and finance, law, taxation, education, labor, public health, agriculture, trade and commerce, public welfare, and public works and domain; and in addition the civil service commission and the state police.

Several victories for the principle of proportional representation have been recorded in recent months. After failures in 1900 and 1910, the advocates of the plan in Switzerland succeeded in 1918 in carrying a constitutional amendment introducing the proportional principle in the election of members of the lower branch of the federal legislature. The system has also been adopted recently for the election of members of the lower house in New South Wales. It was used in the election of the Russian constitutional convention chosen subsequent to the abdication of the Tsar in 1917, and in electing the members of the more recent German and Polish conventions. It is also favored in the Czechoslovak declaration of independence. Lord Bryce has accepted an honorary vice-presidency of the American Proportional Representation League.

BOOK REVIEWS

EDITED BY W. B. MUNRO

Harvard University

Recollections. By JOHN, VISCOUNT MORLEY. (New York: The Macmillan Company. 1917. Two volumes. Pp. x, 388; 382.)

Quite a series of reasons could be advanced, if necessary, to support the prediction that Viscount Morley's *Recollections*, must, for a generation to come or even longer, hold a unique place in the large and continually increasing library of English political biography and reminiscences. Lord Morley's career at Westminster, as its story is unfolded with much reserve in these pages, is without a parallel in the period from the days of the younger Pitt to those of Lloyd George. Then, in regard to the book itself, it stands in a class in which so far the entries are singularly few; for in the hundred and twenty-odd years from the revolution of 1688 to the beginning of the great war, only four British statesmen, who attained to world-wide fame, wrote and published their political recollections. Reminiscences of statesmen in the second class, and of private members of the house of commons, can be counted by the hundred. But as far as can be recalled, without reference to the catalog of a library, the statement may be ventured that Brougham, Malmesbury, Russell and Morley were the only statesmen of front rank who wrote their own recollections of the world of politics at Whitehall and Westminster.

Since Viscount Morley, in August, 1917, wrote the introduction to his *Recollections*, moreover, a new value and additional importance have accrued to them which even he could not then have fully foreseen. This new value is due to the great, almost startling, developments in the politics of the United Kingdom and in the politics of the British Empire, which have come since August, 1917. Four of these developments are in the realm of English politics. A fifth concerns India. There, according to the facts set forth in Mr. Lionel Curtis's recently published *Letters to the People of India on Responsible Government*, the

British government is confronted with a situation almost parallel to that which existed in the United Provinces of Upper and Lower Canada from 1841 onwards, when Baldwin and Lafontaine and their contemporaries of the Liberal or Radical party were demanding the establishment of responsible or parliamentary government.

The four developments in the United Kingdom which give a new interest to Lord Morley's *Recollections* all manifested themselves at the general election in December, 1918. Three of them were in train before the election; but it was the election that impelled the people of the United Kingdom to the discovery that these developments had taken place, and to question themselves seriously regarding them, as well as regarding the portentous development in India. The election made four new conditions obvious. The Nationalist party in Ireland is of the past. It has only seven representatives in the new house of commons. The Sinn Feiners elected seventy-three representatives to Westminster. They are in control of about five-sevenths of Ireland, and are demanding, not home rule, which from at least as early as 1874 to 1918 was the demand of the Nationalists, but independence of Great Britain so complete as to admit of the establishment of a republic in Ireland. Finally, the old Liberal party, for the present at any rate, is in as serious a plight as the Nationalist party. Its representation at Westminster, by the fortunes of the election of December, 1918, was reduced to twenty-eight. Mr. George Lambert is the only member of the Asquith party of both long service and prominence in the party who survived the election; and when the new parliament assembled, it was the Labor party, with its sixty-five members, that was recognized as the leading group in His Majesty's loyal opposition, and assigned to the benches immediately to the left of the Speaker's chair.

These new conditions give a new value to Lord Morley's *Recollections*. They will impel students of contemporary British politics to turn to them with new interest; and for several reasons. The term of Lord Morley's service at Westminster covers approximately the era of the Liberal party that so amazingly went to seed at the election in December. Its era began with the almost general movement of the Whigs to the Conservative party—the movement of 1881–1886—and ended with the defeat of Mr. Asquith and all the leaders of his party either by coalition candidates or by candidates of the Labor party. It would be useless to speculate on the future of the Liberal party. One fact, however, is obvious. The era in the history of the Liberal party which began with the almost complete merger of the Whigs of

the old territorial governing class families with the Conservatives ended in December, 1918, and it is this era of the Liberal party with which Lord Morley is concerned in most of his political as distinct from his literary recollections.

Furthermore, after Gladstone, no English statesman was more prominent in the movement for home rule than Lord Morley. He held only three cabinet offices. He was secretary for Ireland in the days of Gladstone; in the Liberal governments of the eight years that preceded the war he was long secretary of state for India; and his last office was lord president of the council. Much of these two volumes is devoted to Lord Morley's service at the Irish and India offices; and all that the volumes carry concerning Ireland and India has, as has already been indicated, a new value in view of what would seem to be the epochal developments of the last two years in both these countries. In biographies, memoirs, letters, or recollections of English statesmen long in the front rank, it is natural to hope to find some revelations of the working of the political machinery at Whitehall and Westminster. The revelations in Lord Morley's book of this character show how late in the life of Queen Victoria, the queen sought to impose in some matters her will on the premier. They also afford new evidence of the queen's hostility to Gladstone.

EDWARD PORRITT.

Hartford, Conn.

English Leadership. English Readings in Modern History. An Essay, by J. N. LARNED, with an Introduction by WILLIAM HOWARD TAFT; The Geographic Factor in English History, by DONALD E. SMITH; English Contributions to Scientific Thought and the English Gift to World Literature, by GRACE F. CALDWELL. (Springfield, Mass.: C. A. Nichols Company. 1918. Pp. vii, 400.)

What may be described as the basis of *English Leadership*—a book to which, as will have been gleaned from the title, four writers contributed—is an essay written before the war by the late Mr. J. N. Larned, presenting the claims of the English people to the gratitude of a democratic world. Mr. Larned, with whom the study of history had been almost a passion, realized that before everything else, the English have been conspicuously the leaders in the political civilization of the world. Every notable feature of difference between the

modern and the ancient organizations and institutions of government, as Mr. Larned viewed these differences, carried the stamp of English origin or English shaping into practical form. Popular government by representation, deputized democracy, constitutionalized authority—these are almost universal in the social order today, because, as Mr. Larned recalled and emphasized, Englishmen found the way to success, and showed the way to the rest of mankind. In an essay that extends to nearly a hundred and twenty pages, Mr. Larned discussed the question why the English people have been the people to achieve so much for themselves in political civilization, and incidentally to help other peoples to achieve so much in the same universally important realm. He discussed why the English people, so far as their own political civilization is concerned, have achieved success, and how they came to lead all other present day peoples in the creation of beneficent political civilizations.

Outside Germany, there can, in modern times, nowhere have been any disposition to question the lead of the English in the realm of political civilization. None the less Mr. Larned's essay—seemingly the last sustained piece of literary work that he did—is interesting, informing, and suggestive. It was well worth presentation in the permanent form in which it has been embodied; and equally worth the valuable introduction of thirty-two pages written by Mr. Taft. The introduction by ex-President Taft is a well-considered and admirably expressed eulogy of the contributions of the English-speaking peoples to the political civilizations of the world. It is in much the same spirit as his article on Great Britain and the self-governing British dominions —the article entitled "Great Britain's Bread upon the Waters"— which was published in the *National Geographical Magazine*, in March, 1916; although in his introduction to Mr. Larned's essay, Mr. Taft covers much more ground.

EDWARD PORRITT.

Hartford, Conn.

America and Britain. By ANDREW CUNNINGHAM MCLAUGHLIN, A.M., LL.D., F.R.Hist.S. (New York: E. P. Dutton and Company. 1918. Pp. 221.)

This small volume of lectures is one of the by-products of the war. It is a book with a purpose; its character has been determined by its appeal. The lectures were intended for the general English public

rather than for the scientific world, and it is by this standard that they must be judged. The author frankly admits his admiration for British institutions, but he does not allow his sympathies to affect his independent judgment. The entire treatment of the subject matter is characterized by candor, insight, and fair-mindedness. The book is indeed a rare combination of fragments of history, moral philosophy, belligerent zeal, and political idealism. In short, it voices the hopes and convictions of the American public in their appeal to the enlightened conscience of the British nation.

The first lecture gives a clear and satisfactory analysis of America's early reaction to the war and the considerations which finally induced her to discard the historic policy of isolation and throw herself wholeheartedly and unselfishly into the struggle.

The two following chapters on British-American relations constitute the main thesis of the book. Professor McLaughlin has been singularly tactful in handling this difficult topic. The English are by no means ignorant of their manifold national failings. Their sins are ever before them. It is seldom, however, that foreign criticism is brought home to them so forcibly and yet in such good taste as to afford no occasion for heart-burning on the part of any liberal-minded Englishman. But while the tone of the criticism is excellent, the treatment of the subject matter is much less satisfactory. It is passing strange that the author should have limited his discussion to the direct and immediate relations of England and America. He has apparently overlooked the fact that there is a British Empire and that Canada is a most important factor in the determination of almost all Anglo-American questions. There are, in fact, three parties to the international relation, not simply two. The failure to realize this fact has seriously detracted from the value of the whole discussion.

The lecture on the Monroe Doctrine follows the general line of Professor Hart's treatment of this question. Historically it presents little that is new or distinctive. Its chief significance lies in the attempt to extend the Mobile interpretation of the Monroe Doctrine to the entire world. The argument is interesting, though somewhat obscure and inconclusive. The author finds considerable difficulty in reconciling the principle of internationalism with the right of self-determination, but he believes that a reconciliation may and will be found in the democratization of world relations. This democratic faith will soon be put to the test by the Peace Conference. It is interesting to observe in this connection that one at least of the South American

delegates at Paris has openly declared that he does not regard the Monroe Doctrine as compatible with the right of national independence or with a League of Free Nations. This aspect of the subject is certainly deserving of more consideration than the author has seen fit to devote to it.

The last lecture in the series, "The Background of American Federalism," is essentially different in character and subject matter from the earlier addresses. It is a strictly scientific presentation of an important colonial question. This address, which has already appeared in the AMERICAN POLITICAL SCIENCE REVIEW, is not so much out of place in this series as might at first appear, inasmuch as the discussion of federal principles in the early American colonies serves to throw light upon some of the constitutional problems of the British Empire today.

These brief studies, we may then conclude, are admirably adapted to serve the educational purpose the author had in mind. They can scarce fail to promote a better understanding on both sides of the Atlantic and awaken a keener appreciation of the essential unity of Anglo-American ideals. The lectures, it must be admitted, are of greater present political interest than of future scholastic value, but this fact does not in any way detract from their general usefulness. For a more critical and exhaustive presentation of the questions at issue, the student of diplomacy may turn to Mr. Beer's recent work on *The English Speaking Peoples.*

C. D. ALLIN.

University of Minnesota.

The Responsible State: A Re-examination of Fundamental Political Doctrines in the Light of the World War and the Menace of Anarchism. By FRANKLIN HENRY GIDDINGS. (Colver Lectures, Brown University, 1918. Boston and New York: Houghton Mifflin Company. 1918. Pp. xi, 108.)

These lectures comprise an unusually clear and interesting discussion of some of the broader, more habitual problems relating to the basis and scope of state authority and duty. The author's treatment of these questions seems, however, to be marred in some parts by defects in temper and method which cannot escape mention. Despite the broad title of the work and the comprehensive chapter headings, it would not perhaps be fair to complain that, in a brief series of lectures,

many important subjects within the fields indicated are overlooked. However, when the author, in bringing forward some particular question of state responsibility in order to set forth his views in the matter, selects for comparison or refutation only the obviously weakest alternatives to his doctrines, it seems not unfair to suggest inadequacy of treatment at such points. For example, when he discusses the topic of distributive justice under the state, he is concerned with the problem of inequalities in economic and cultural opportunity only in so far as to develop the familiar conclusion that, because of natural, congenital differences among individuals, absolute or rigid equality in comfort and attainment is not a practicable ideal. In this way he ignores more significant proposals of those who, while freely acknowledging the differences in "biological heredity," are concerned about inequalities, in status and opportunity, with which biological differences have nothing whatever to do.

It is perhaps far too soon to expect, even in academic quarters, judicious appreciation of the varieties of opinion which divided intelligent and patriotic people in this country before our entrance into the war. Professor Giddings speaks broadly and confidently of men "who from the first day of August 1914 saw the situation as it was;" and he assumes that it was the "increasingly respectful attention" gained "throughout the country and at Washington," by these exclusive patriots and prophets whom he has in mind (rather than interpretation and guidance from other sources) that finally brought our country "undivided" to the support of the war.

But despite the several parts in which the mood of complacent illiberalism prevails, the dominant or final tone of Professor Giddings's discussion in these lectures is probably more fairly found in other parts. His criticism of the traditional metaphysical conception of absolute sovereignty, though made upon a basis now becoming familiar through the writings of Duguit, Laski and others, is stated with especial effectiveness. His own definition of sovereignty might, however, be difficult to maintain against his test of applicability to concrete experience. His defense of universal military service is expressed in words less chauvinistic and arrogant than those we frequently hear. Finally, his full acceptance of the "experimental policy" (comprising "experiments in coöperation, including so-called 'syndicalism' and local communism, experiments in the municipal ownership and control of public utilities and of basic trades and industries, experiments in national ownership of railroads and mines") as the only method

whereby the issues between socialism and individualism can be resolved, should gain for him full credit for open-mindedness in regard to many political problems of chief and most immediate importance.

The slip—"John Hobbes" (page 29)—is quite uncharacteristic of the author.

F. W. Coker.

Ohio State University.

The Metaphysical Theory of the State: A Criticism. By L. T. Hobhouse, D.Lit., Martin White Professor of Sociology in the University of London. (London: George Allen and Unwin, Ltd.; New York: The Macmillan Company. 1918. Pp. 156.)

This volume, the substance of which was given in a course of lectures at the London School of Economics in the autumn of 1917, contains doubtless the most acute and thorough-going criticism of the Hegelian theory of the state that the great war has called forth. The author, in the dedication to his son, who was a lieutenant in the British air service, lamenting the disabilities of middle age which prevent him from meeting the enemy's Gothas in the air, devotes himself, by the tools and weapons which he can best use, to the same task of "making the world safe for democracy." "In the bombing of London," he says, "I had just witnessed the visible and tangible outcome of a false and wicked doctrine, the foundations of which lay, as I believe, in the book before me."

It is not Hegel, or his German disciples alone, however, who are the objects of his penetrating criticism and attack. A considerable portion of the book is a critique of Bosanquet's work, and particularly of his *Philosophical Theory of the State*, in which is found perhaps the most clear and forceful presentation of the contemporary English version of Hegelian idealism. Bosanquet, it may be remarked, is about the only English idealist who has ventured publicly to reiterate his adherence to a theory which has acquired such general opprobrium. In his work on *Social and International Ideals* which appeared in 1917 his doctrines are repeated in essentially unmodified form. These principles with all their implications are severely handled by the author.

The connection between Hegelian political theory and the irresponsible and unrestrained state action of the German government in recent years has been frequently pointed out, and is too obvious to be ques-

tioned. But the student of the history of political theories recalls numerous instances of the misuse of political doctrines to justify questionable political conduct. The social compact idea was a weapon at different periods in the hands of both the adherents of popular government and of monarchical absolutism. In the heat and passion of the present moment we are perhaps apt to forget that Hegel and Fichte wrote for a generation and for a nation which needed above all else the strengthening of the sentiment of patriotism. That their ideas have been transmuted through Treitschkean and Bernhardian influence into the theoretical justification of the militaristic imperialism of contemporary Germany is merely another illustration of the protean forms that any political theory is capable of assuming. Hobhouse, himself, though denouncing Hegel's doctrine as "false and wicked," admits that in the hands of T. H. Green it has been "transmuted into a philosophy of social idealism, a variant which has a value of its own;" while Karl Marx, working from the same Hegelian basis, developed a theory of internationalism.

The Hegelian theory was doubtless a reaction against the excesses of the humanitarian and individualistic theories of the eighteenth century. To these Hobhouse would in essential respects return. While his criticism of Hegelian idealism is convincing, he offers no substantial constructive assistance toward the formulation of a new theory of the state which would meet the conditions of the age in which we now live.

WALTER JAMES SHEPARD.

University of Missouri.

The Moral and Political Philosophy of John Locke. By STERLING POWER LAMPRECHT. (New York: Columbia University Press. 1918. Pp. 164.)

This excellent monograph will be welcomed by all serious students of John Locke, for though Locke's chief contributions to thought were in the realm of epistemology, he occupied an important place in the development of English ethical and political theory, and surprisingly little attention has been given by previous writers to this part of his work. Dr. Lamprecht has not only presented these aspects of Locke's philosophy clearly, critically and fairly; he has also placed them in their proper historical setting by so much exposition as was needful of the views of his predecessors and contemporaries. In Locke's ethics Dr. Lamprecht finds a rationalistic and a hedonistic tendency, while

his political philosophy is almost wholly rationalistic in its procedure. Locke's *a priori* view of a state of nature determined in large part his conception of political rights; and some of his most important conclusions, such as that of the right of revolution and the limitations of that right, were based not upon "consequences" but on a consideration of the legal clauses of a hypothetical agreement between a people and their rulers. In this respect Locke's political theory is decidedly weak. One must, however, recognize the real advance he made upon the position of his predecessors, an advance which has given him the merited distinction of being the political philosopher of the English revolution.

JAMES BISSETT PRATT.

Williams College.

The Political Works of James I. Reprinted from the Edition of 1616. With an Introduction by CHARLES HOWARD MCILWAIN. (Cambridge: Harvard University Press. Pp. cxi, 345.)

The department of government of Harvard University has selected for the first volume of a contemplated series of Harvard Political Classics the *Political Works of James I*, now no longer generally accessible, except for a few striking excerpts in Prothero's *Select Statutes*. It is to be hoped that this first venture, provided with a learned and luminous introduction, and withal so satisfying as to print and binding, may meet with such a reception as to encourage further productions in the field; for, as Professor McIlwain convincingly remarks: "The needs of a thorough student of the history of political thought can never be adequately met by mere fragments torn out of the classical writings of the past, useful though such fragments may be." Indeed, in the present instance, granted that he wrote all that appears under his name, one gains from reading the whole of the *Basilikon Doron*, the speeches to Parliament, and the other works here reprinted evidences of James's wisdom, high-mindedness, nay, even of progressive views (e.g. pp. 311, 312), which counteract, to some degree, the impression derived from his more commonly quoted extravagant utterances.

Pedantic and grotesque as James I usually was, his views deserve particularly to be studied because of one profoundly significant issue which they reflected and another which they precipitated. His assertion of the divine right of kings in its most exaggerated form was but the final polish on a weapon which others had been forging since the Reforma-

tion to defeat the papal claims to temporal power, while, moreover, it was the persistent flourishing of this weapon in controversies with his subjects that precipitated that subsequent conflict, the notable result of which was to secure for England a constitutional monarchy well over a century before any other European country. It is a far cry from the erstwhile Kaiser Wilhelm II to poor James I—well-meaning and not without shrewdness but futile and infirm of purpose—yet the former, to the day of his downfall, clung to the same notion of divine right that resulted in the doom of the Stuart line, and both monarchs expressed their views with equal pretentiousness. Had the Hohenzollerns read from the past and ceased to cling to a political anachronism the course of history might have been altered.

Professor McIlwain, sparing himself the pains of annotations to and commentaries on the text of the writings which he reprints, has devoted his main energies to his introduction where he sets forth Jacobean problems and contentions, as well as their background. While the findings are based on extensive reading of contemporary literature, enriched by thoughtful interpretation, one will, naturally, have to look elsewhere for many events and tendencies—outside the arena of political and ecclesiastical writings—which contributed to make the reign of James I so pregnant in results. A few notes might have been introduced to correct palpable errors in the King's historical allusions—for example, his attributing to the Lacedaemonians instead of to Zaleucus of Locri the requirement that men who introduced new laws should appear with ropes around their necks (p. 288) and assigning to the time of Charlemagne the close union between England and Scotland whereas it really dates from the time of Edward I (p. 302)—but such slips could hardly mislead the well-equipped reader to whom a work of this character would primarily appeal.

ARTHUR LYON CROSS.

University of Michigan.

Safe and Unsafe Democracy. By HENRY WARE JONES. (New York: Thomas Y. Crowell and Company. 1918. Pp. 500.)

The Valley of Democracy. By MEREDITH NICHOLSON. (New York: Charles Scribner's Sons. 1918. Pp. 284.)

Probably the book editor will forgive me for suggesting that *Safe and Unsafe Democracy* by Henry Ware Jones could have been more

entertainingly reviewed by Meredith Nicholson, author of *The Valley of Democracy*, and that *The Valley of Democracy* could have been more entertainingly reviewed by Henry Ware Jones. *The Valley of Democracy* is a picture of the life and people of the Middle West, drawn with all the charm of a novel. It visualizes the spirit of the Middle West in the word "folksiness." It smiles at the "panaceas and pancakes" of the Middle West; it dwells on the customs and manners of the Middle West, past and passing, always with naive candor but never without sympathy; and it champions the robust character of the Middle West, taking pains to remind the easterner that the Middle West is worth knowing and understanding and reckoning with. The book is broad in outline and intimate in detail, from picnicking to politics, from crowded streets to open prairies; for Mr. Nicholson is a westerner himself, and he is true to the west though he does not lose his perspective. And his perspective is this:

"The seeker of types is so prone to look for the eccentric, the fantastic (and I am not without my interest in these varieties) which so astonishingly repeat themselves, that he is likely to ignore the claims of the normal, the real 'folksey' 'bread-and-butter' people who are, after all the mainstay of our democracy."

So it is the bread-and-butter people that Mr. Nicholson draws for us, and not only in their relation to bread and butter, but also to science and literature and religion and social things and politics. And it is because he is "disposed to say that the most interesting thing about us is our politics" that a little journey by Henry Ware Jones through *The Valley of Democracy* seems so desirable.

Mr. Jones is interested in nothing but politics in *Safe and Unsafe Democracy*. He has made an exhaustive study of American politics, not by way of combating personalities or platforms, but for the purpose of discovering the one true, political system for American democracy. He has gone to the bottom of the well, and he has dug up truth as he sees it. He would abolish "the partisan party" altogether. And since the west, as Mr. Nicholson will doubtless admit, is willing to try anything once, Mr. Jones might be able to discern in one of the middle western states a likely laboratory for encouraging experiment. The partisan party, Mr. Jones insists, does not work solely for the promotion of the general welfare, but rather for the party welfare. "It is a parasitic growth which saps the vigor of our political body and threatens a premature political death. Neither with safety nor with honor can the reserved or the delegated powers of administration be placed under

the control of any partisan agency whatsoever, and both the partisan party and its system must be dropped from our scheme of administrative action before we can hope to obtain and to transmit the "blessings" promised in the name of American democracy. Party managements "are wholly composed of men who in one way or another, directly or indirectly, either make a living, or gain political 'honor' and preferment by keeping and exercising this control." "They work secretly, collusively, and for their own private interests through self-appointed administrative boards and local partisan party leaders, captains, workers, heelers, repeaters, and ballot-box stuffers." Under their régime " 'practical politics' and 'commercialized politics' flourish and bear the baneful fruits of bossism; deals; trades in votes, offices and opportunities for dispensing privileges to private interests; combines against the public interests, the gerrymander; log-rolling; jobbery;" and so forth. Even the direct primary fails to effect the needed reform since it comes under the party control.

What we need, Mr. Jones concludes, is a body of sound political science expressed in a "body of electoral liberties, bestowing freedom of reason, conscience and volition on the elector" and a "body of official liberties under which the official would possess the requisite amount of freedom and independence in official action." And this, he thinks, may be brought about by the action of free electoral groups and political leagues. Maybe! Whether we can all accept Mr. Jones's indictment and his remedy, we can all be grateful for the stimulus he has given to political thought.

H. M. NIMMO.

Detroit, Mich.

The Citizen and the Republic. A Text-book in Government. By JAMES ALBERT WOODBURN, Professor of American History, Indiana University, and THOMAS FRANCIS MORAN, Professor of History and Economics, Purdue University. (New York: Longmans, Green and Company. 1918. Pp. viii, 398; Appendix and Index, ix–xlvi.)

Teachers of political science have long recognized that a vital problem exists in connection with instruction of government in secondary schools. Textbooks have been unsatisfactory and teachers have been inadequately trained. The result has been instruction of a very poor quality. To the solution of the textbook phase of this problem

Professors Woodburn and Moran have made their contribution in the volume under review. It is gratifying that men of such wide learning and successful experience as teachers should concern themselves with this question.

The authors have a definite purpose in mind—to combine the good things in the "new civics" with the good things in the old methods of instruction. They recognize the value of "community civics," but feel that it may be made one-sided and inadequate. To limit a high school course in civics to the study of the political processes and activities of the local community, however important these may be, "is to commit a great wrong to young people who are under training for citizenship." Knowledge of the state and national governments is essential. "The Constitution of the United States is still in running order, and it is still a document worthy of the careful study of all citizens who are to live under it."

In the opinion of the reviewer, the authors have succeeded admirably in accomplishing their purpose. The twenty chapters of the book include not only a sufficiently full description of American government—local, municipal, state and national—but also a clear, stimulating discussion of the rights and duties of citizens; forms and functions of government; political parties and their organization and work; constitutional development; the enlarging powers of government; present day political problems; and American ideals in government. In the treatment of practical, present day problems, such as immigration, popular primaries, the short ballot, initiative and referendum, the book is notably successful. Controversial questions are discussed impartially and helpfully. The purpose always is to instruct the pupil and help him to understand not only the obligations of citizenship, but specific problems which face American citizens in their struggle for a more perfect and a more efficient democracy.

In its mechanical features and in the matter of arrangement, the book is excellent. Twelve maps and charts, and more than sixty illustrations add to its interest and value. There is an Appendix containing the Articles of Confederation, the Constitution of the United States, and a few useful statistical tables. The index is adequate.

Criticism seems hardly to be called for, though opinions will differ, of course, as to what a high school textbook in civics should be. The reviewer's opinion is, in general, one of commendation, though he cannot help wondering if Professors Woodburn and Moran have not made their book rather difficult for the average secondary school pupil, even

if it is used in a course which follows or accompanies a course in American history, as the authors intend. Many subjects are covered and a good deal of elementary knowledge is necessary for their understanding. The book certainly calls for a well-trained teacher. In the hands of the right kind of instructor it should prove an inspiring text. But how many instructors of civics of this kind are there in the high schools?

JOHN W. GANNAWAY.

Grinnell College.

The Eve of Election. By JOHN B. HOWE. (New York: The Macmillan Company. Pp. 283.)

The title of this book is taken from the title of one of the author's favorite poems of Whittier. The book, like the poem, deals with the responsibility of the elective franchise, both book and poem being prompted by the conviction that "the kingliest act of Freedom is the freeman's vote." The author believes that there is a seed time and harvest in voting and that the time for the sower and his seed is before the eve of election. The volume is written with new voters in mind—the young men coming on, and now the women of varied ages, in ever increasing numbers. The book is written in an interesting and readable style, and it presents the elements of knowledge which intelligent voters need, about the Constitution, the federal government, the electoral college, methods of voting, and state and city government. There is a brief summary of our party history, of women's "battle for the franchise," and a discussion of recent experiments and growth in democracy, dealing with such topics as party primaries, the boss, the referendum, and the recall. The chapters are only brief running accounts but they are remarkably well done and they supply a surprising amount of valuable information to the lay reader, considering the very limited space which the author has allowed himself.

Mr. Howe writes with a spirit of fairness, his perspective is good, and he presents the essentials of his subject with knowledge and accuracy. Only on minor points would a critic take exception to the accuracy of his history. It was not in October but in September that Roosevelt became President. Greeley did not die before the election of 1872, as the author indicates immediately following the misstatement. For the pioneers of woman's suffrage the author might have gone back nearly two decades beyond Mrs. Stanton and Miss Susan B. Anthony, to Robert Owen and Fanny Wright. Early state constitutions were

not "sanctioned at the polls," and it may be seriously doubted whether "faith in the people inspired the whole convention" of 1787. Other flaws might be found by an historical critic, but they may be pardoned to journalistic license, since they do not seriously vitiate the general merits and usefulness of the book. Advocates of the referendum will take positive exception to Mr. Howe's treatment of that subject. "Transforming the average citizen offhand by constitutional fiat into a doctor, a civil engineer or an architect" is hardly analogous to allowing the people to vote on public policies. One wonders what kind of experts the author thinks usually sit in our legislative halls, or whether he thinks only lawyers should sit there. Expert legal draftsmen (who are usually outside legislative halls) are needed under any system of legislation, direct or indirect.

The volume has no index, which indicates the journalistic character of the work. The appendix contains "information for first voters summarized from the election law of New York State." The book is well worth the reading of citizens, young or old.

JAMES A. WOODBURN.

University of Indiana.

A Republic of Nations. By RALEIGH C. MINOR. (New York: Oxford University Press. 1918. Pp. xxxiii, 316.)

The present volume is based upon the belief of the author that the only effective means by which an international court could be created with jurisdiction over those disputes between nations which give rise to war would be the formation of "some sort of federal union of nations." As a result of such a union the "political" controversies which have been in the past the cause of war and which have been excepted from arbitration treaties as being nonjusticiable would be eliminated, and such disputes as might thereafter arise between the nations would be legal and justiciable by reason of being covered by the constitution of the federal union. The elimination of political disputes would be brought about by the surrender to the union of those political powers of the several states the exercise of which leads to war, that is to say, the power to control commerce between the component nations, to acquire territory of other states, to mistreat their citizens, to lay burdens upon imports and exports, to maintain armaments in excess of a fixed proportion, to make treaties of alliance, and to declare war.

Assuming the necessity of this surrender of sovereign powers, and with no more than a formal attempt to discuss the political problems involved in it, Professor Minor undertakes to work out the agreements upon which the respective powers of the league and its component members would be based. These agreements are cast in the form of a tentative constitution for the "United Nations," the arrangement of which follows closely that of the Constitution of the United States, and the two are placed side by side for comparison in the Appendix.

It will not satisfy to reply to Professor Minor that his entire scheme is based upon an assumption of surrender of national sovereignty which is so far from being accepted by the nations as to make the entire discussion academic. The truth is that no league of nations is adequate to maintain peace unless certain problems of substantive law, such as the regulation of commerce between the nations, are squarely faced. The author meets the issue by demanding political federation. The demand is, it would appear, too idealistic at present, but the elaborate form in which it is here presented and the close parallel it offers to the American federation of 1789 will furnish many valuable points of comparison with the draft constitution of the league of nations now before the public, which, with its looser machinery and evasion of the chief sources of international dispute, represents the closest union considered practicable by the nations under present conditions.

C. G. FENWICK.

Bryn Mawr College.

Nationality and Government, with other War-time Essays. By ALFRED E. ZIMMERN. (New York: Robert M. McBride and Company. 1918. Pp. xxiv, 364.)

This volume is a collection of fourteen lectures and papers, written with one exception during the course of the war. Chapters I to IV deal with questions of nationality, attacking the doctrine that the national state is the proper unit of political organization; and drawing a distinction between nationality, as a subjective, spiritual, condition of mind, and political organization as an objective, practical, condition in law. The author believes that nationality is not necessarily a political question, that emphasis on nationality as the basis of state formation leads to oppression of minority groups and destroys freedom. He views nationality as essentially a problem of education, valuable as a means of preserving individual self-respect against a materialistic cosmopolitanism.

The author is skeptical concerning world organization, believing in the improvement of existing constitutional systems, and in coöperation among states rather than in schemes of interstate government. In the preface, however, he points out that the entrance of the United States into the war and the revolution in autocratic Russia have removed the chief obstacles to constructive proposals for political world unity.

Chapters v and vi discuss education and its effect on social and national public opinion. Chapters vii and viii are brief but brilliant surveys of the evolution of government and of industry. Chapters ix to xii deal with various aspects of reconstruction in industry and favor the policy of joint control as adopted recently in the report of the Whitely committee. The final chapters point out the undesirable extremes of Prussianism, desiring world control under autocratic force, and of Bolshevism, creating revolutionary doctrines growing out of oppression and fanaticism. In contrast the author suggests the liberal ideal of a commonwealth, based on intelligent and coöperative organization. In spite of a considerable amount of repetition, the volume is an aid to clear thinking on the confused problems of nationality, world organization, social education and industrial control.

RAYMOND GARFIELD GETTELL.

Amherst College.

Ireland: A Study in Nationalism. By FRANCIS HACKETT. (New York: B. W. Huebsch. 1918.)

This volume is one of the best studies made about Ireland for some time, though scarcely worthy to rank with Paul-Dubois's *L'Irlande Contemporaine,* as one critic has declared. It is written with great charm, and is one of the most interesting contributions upon an important contemporary question; though the vigor and clearness of the composition accompany a journalistic style which at times degenerates into bad taste and careless expression.

The book contains perhaps the best account of present Irish conditions and some aspects of the Irish question now existing. It is not so much a critical and historical treatment of Irish matters as a vivid and even passionate discussion of Irish social and economic conditions, and herein are the chief value and interest of the work. Nowhere is there better description of Irish religious affairs, the influence of the priests, and the defects of Irish education; while the author's opinions

as to poverty and economic factors, if apparently inspired more by the reformer's zeal to make things better than the critic's appreciation of all elements of the situation, are very suggestive. For an understanding of Ireland as it is and as it has been for some years past, the book is to be highly recommended, though it must be supplemented and corrected by reading of others.

The work has, however, serious faults, and affords very inadequate material for correct and just judgment of the whole Irish question. This problem is not, as many of the ill-informed and aggressive seem to think, one which affects Ireland alone, nor is it one which can be dealt with merely in terms of the present and a future hoped for and conjectured. Great Britain has also to be considered; while the matter can neither be rightly understood nor properly dealt with unless there be also considerable understanding of the past and of how things came to be. It is precisely in respect of these considerations that the volume is least good. The author writes as a worker in some social survey or as a journalist, rather than as an historical investigator; and while he does not, to do him justice, view the Celtic past through the haze of sentimental ignorance and biased erudition of Mrs. Green, yet there is far too little in the book dealing with what has been, as properly to explain the things of the present which he denounces or would so surely and easily reform. Nor has he done justice either to himself or his subject in writing an entire chapter upon the earlier history of Ireland in the form of a modern parable about fishing and cutting of bait. The gravest defect of all is the little consideration given to the position of Britain at present. The geographical and strategic situation of Ireland with respect to the neighboring island, which has concerned leaders and statesmen for some hundreds of years, and is usually recognized by critics as a fundamental element in the problem of Irish independence or connection with England, he dismisses immediately by reprehending the maxims which von Bissing laid down for the German domination of Belgium. Indeed, in several instances he disposes of unpleasant considerations or considerable objections by declaring that they savor of the Prussian spirit. Occasionally the handling of evidence is clumsy if not unfair.

The author's main conclusions seem to be sound: there are things in Ireland wrong which must be amended; Irishmen should not seek complete separation, but accept the status of a self-governing dominion in the British commonwealth. Perhaps the better conditions of an era which we see now beginning may enable British statesmen and the

leaders of the new nationalism in Ireland to agree to bring these things about.

EDWARD RAYMOND TURNER.

University of Michigan.

Racial Factors in Democracy. By PHILIP AINSWORTH MEANS. (Boston: Marshall Jones Company. 1918. Pp. x, 278.)

Mr. Means devotes the first half of his book to a cursory survey of the cultural history of mankind from the *pithecanthropus erectus* down to relatively late American civilizations. However, very little use is made of this long introduction in the brief discussion of the laws of cultural growth and their relation to democratic development, or in the idealistic sketch of a democratic government based on merit. The last third of the book, save for a brief statement of conclusions, is occupied with an exposition of the anthropological aspects of certain modern colonies, and the extent to which race-appreciation has been applied in their government.

At a time of social turmoil and political uncertainty, when radical world reorganization is a foregone conclusion, the friends of democracy should gratefully welcome light and assistance from unwonted sources. Mr. Means has tried to make anthropology the hand-maiden of political science, unfortunately with only moderate success, both because of lack of detail and because of imperfect logic. The liberal thought of Western civilization already tends to believe in his thesis; but neither is that belief a result of anthropological considerations, nor is it likely that it will be strengthened thereby to any extent, if Mr. Means has made the most of that line of argument.

Essentially his argument is that because the historical development of races and cultures has been marked by extensive borrowing, conscious and unconscious, we must and will, if democratic world organization is to be secured, consciously adopt, systematically and on a large scale, a policy of race-appreciation and interdependence, acknowledging the superiority of other cultures in certain particulars, and eclectically bending the best of their institutions into our own racial life. The conclusion hardly seems inevitable. Certain it is that if the immediate future is to be characterized by a more generous race-appreciation (as it must be if the league of nations is not to be a mere paper mockery), the reason and motive are found in the obvious failure of

the racial closed-door policy of the past and the compelling utilitarian argument of the present.

ALBERT R. ELLINGWOOD.

Colorado College.

War and Progress: the Growth of the World Influence of the Anglo-Saxon. By WILLIAM S. HOWE. (Boston: LeRoy Phillips. 1918. Pp. 136.)

One of the three great world groups—designated as Anglo-Saxon, Slavic, and East Asian—will control the moral purposes of the world in the future, and for the good of the world the Anglo-Saxon should be the one: this is the main thesis of *War and Progress: the World Influence of the Anglo-Saxon,* by William S. Howe.

The book was written, some of its material appearing in magazines, before the signing of the armistice, and the author expresses what was then a very proper anxiety about the outcome of the war, making suggestions which he feels would contribute toward an Allied victory. He feels "the only sure way to win is to anticipate the worst and then plan to beat that worst." Some of the topics, though interesting in themselves, seem irrelevant to the main theme: that of how much the Allies owe to Russia for her activities in the first two and a half years, and the outline of a scheme for introducing a "premier" quickly responsive to public opinion into the mechanism of the United States government. Two other defects are the lack of an index and the sometimes indiscriminating use of terms, as in the case of England, British, Great Britain, etc.

On the whole the book contains much salutary direct thinking and plain speaking on broad international relations in terms intended for the nonexpert.

The catch phrases "self-determination" and "open diplomacy" are subjected to a sane criticism which divests them of their halos. As Mr. Howe points out, the doctrine of self-determination would not have preserved the Union in 1861–65, and diplomacy without secrecy would put democracies at a disadvantage with autocracies.

By the Ango-Saxon group the author means the British Empire and the United States. He says that "in spite of just differences, present conditions and future political questions make it impossible that they should act in any other way than as a unit in international affairs," and he is in harmony with a growing body of political thought when

he speaks approvingly of "the union between Great Britain and the United States, placing the resources of the latter and the skill and foresight of the former in international relations in combination."

Japan-China is treated as an entity. And certainly anyone who does not understand why should not fail to read the book.

SINCLAIR KENNEDY.

Brookline, Mass.

Source Book of Military Law and War-time Legislation. By Col. JOHN H. WIGMORE. (St. Paul: The West Publishing Company. 1918. Pp. xviii, 858.)

This volume, which bears throughout its pages the marks of Col. John H. Wigmore's skill in the selection of materials, was prepared under the auspices of the war department's committee on education and special training for use in connection with the work of the Students' Army Training Corps. The demobilization of these student soldiers will prevent the book from achieving its immediate purpose, but its usefulness to the general student of American government will amply justify its publication. In no other book, and indeed in no other small group of books, can one find the materials which have been brought together here. It includes not only the chief legislative enactments relating to military administration, but a large number of the most important judicial opinions affecting war-time questions and also a selection from the rulings of the judge advocate general's department. Such portions of the Army Regulations and the General Orders as seem necessary to round out the field are likewise included. The value of such a book to teachers is, of course, quite obvious. The war has made great changes in many branches of civil administration and the student of political science must be brought abreast of them all. Colonel Wigmore's compilation would form an admirable basis for a course on American war government.

W. B. M.

The History of Legislative Methods in the Period before 1825. By Dr. RALPH VOLNEY HARLOW. (New Haven: Yale University Press. 1917.)

This is one of those books that carry a wider interest than is conveyed by the title. It has interest and value from at least four points of view. It is a contribution of permanent serviceability to the his-

tory of the development of legislative institutions and their working. It throws much light on the transition at the Revolution of 1776-83 from British provinces to states of the American republic, especially as regards resettlement of organization and procedure of the legislatures. It offers material helpful to an understanding of the character of the legislatures of the later colonial period; and finally the earlier chapters have a distinct value for students of the working of the provincial legislatures of the British North American provinces in the period from 1783 to the rebellions in Lower and Upper Canada of 1837–38. These legislatures are not mentioned in Dr. Harlow's pages. Obviously legislatures in the British North American provinces of 1783–1837 lie quite outside the scope of his study. But it is impossible to read the chapters on the colonial legislatures of the thirty years that preceded the union of the provinces of Upper and Lower Canada in 1841, without realizing why Downing Street was so unwilling to concede full control over finance to the Canadian legislatures, and why, almost until responsible government was conceded, the government in London attached so much importance to civil lists that were not under the full control of the legislatures.

Legislative or congressional procedure in general has not been Dr. Harlow's theme. His special concern was to trace the growth of the committee systems in the provincial legislature; in the legislatures of the states; and in the federal house of representatives from its first session until the beginning of 1825. This was the undertaking to which he committed himself; and it is an undertaking in which he has achieved full success. As has been remarked, procedure in all its aspects was not Dr. Harlow's subject. It is almost to be wished that it had been—that he had widened his field so as to include procedure and the relations of the senate and house of representatives. With a little wider scope and the whole field covered as efficiently as he has dealt with the development of standing committees, he would have produced a book approximating in value *The Procedure of the House of Commons* of Dr. Redlich.

E. P. Hartford.

MINOR NOTICES

The Nation at War, by President James A. B. Scherer of Throop College, (George H. Doran Co.) is the story of the way in which a German-American educator became converted to an unqualified Americanism and served the United States with great enthusiasm during the war. Dr. Scherer became one of the "dollar a year" men and served as one of the field agents of the Council of National Defense and in the course of his work visited every state in the Union, helping the various state councils to do their duties more effectively. The book is interesting throughout and contains material of great value.

The Comstock Publishing Company of Ithaca, N. Y., is sponsor for a timely little volume by L. H. Bailey entitled *What is Democracy?* (pp. 175). The discussion relates to the true import of democracy to the worker and especially to the agricultural worker. There are suggestive chapters on the relation of democracy to cheap food and to the permanent interests of agriculture. The author is particularly well qualified to write on this phase of the situation and his book deserves the attention of those who are now engaged in the study of democracy as a world problem.

How to go about the problem of political and social readjustment is the main theme of *Democracy made Safe*, by Paul Harris Drake (Boston: Leroy Phillips, pp. 110). The book presents an analysis of human motives in their relation to government and raises many interesting questions concerning the methods of making democracy real. The author writes with a certain measure of dignified restraint, but carries his points effectively nevertheless. He makes an earnest plea that we may spend fewer millions on business equipment and more on business philosophy, to the end that we may make our industrial system human as well as efficient.

Among the narratives of the American army's part in the great war, Frederick Palmer's *America in France* (Dodd, Mead and Co., pp. 479) is one of the most widely read. It is an interesting volume throughout, but eulogistic to a degree which excites suspicion. Major Palmer had access to the inner councils of the overseas military organization during the earlier operations and he is able, therefore, to set forth much information which has not come to us through the ordinary newspaper channels.

The Macmillan Company has published Leo Perla's *What is National Honor?* with an introduction by Norman Angell (pp. 211). The book deals with such timely topics as the emotional basis of national honor and a program for a permanent peace. An interesting feature is the symposium of international questions in which, at various periods in history, the motive of national honor has been directly or indirectly in operation.

Dr. David Starr Jordan's *Democracy and World Relations* (World Book Co., pp. VII, 158) contains an exposition of the aims and methods of democracy as the author sees them in relation to nationalism, the government of dependent territories, diplomacy and world peace. Emphasis is laid upon the evolutionary character of democratic government. In contrast with the ideals of true democracy Dr. Jordan portrays the dynastic state with its ideals of autocracy, efficiency and intrigue. Pan-Germanism is discussed in one chapter; the league of nations in another. The style is clear, incisive and noncontroversial.

Will it be a Congress of Vienna after all? This is one of the many suggestive questions which Norman Angell propounds in a volume on *The Political Conditions of Allied Success* (G. P. Putnam's Sons, pp. 350). The book was written before the hostilities in Europe came to an end, but the problems which it discusses have not yet been solved and Mr. Angell's chapters set them forth in bold relief. His attitude on the great questions is well known and it is explained in no equivocal terms. The chapter on "The Problem of the Criminal Nation" is a model of clear and vigorous presentation.

During the year 1918 the Oxford University Press has published, for the Carnegie Endowment for International Peace, several additional volumes on international law subjects, as follows: *Les Conventions et Déclarations de la Haye de 1899 et 1907, Une Cour de Justice Internationale, The Treaties of 1785, 1799 and 1828 between the United States and Prussia,* and *The Armed Neutralities of 1780 and 1800;* also an extended study of *Federal Military Pension Legislation in the United States,* by William H. Glasson.

A series of publications has been issued for the American Hellenic Society on: *The Greek Question* by Auguste Gauvain, *Greece and Tomorrow* by Z. D. Ferriman, *Persecutions of the Greeks in Turkey since*

the Beginning of the European War, translated from official documents by Carroll N. Brown and Theodore P. Ion, and a translation of *Hellenism in Asia Minor*, by Dr. Karl Dieterich. In another series is a volume on *The Question of Northern Epirus at the Peace Conference*, by Nicholas J. Cassavates (pp. 172.)

The Fleming H. Revell Company has brought out a volume entitled *A Bulwark against Germany*, by Bugumil Vosnjak (pp. 283). The author is a member of the Jugoslav committee and his book deals mainly with the fight of the Slovenes, or western branch of the Jugoslavs, for recognition of their national existence. In a convincing way the writer indicates how a union of all the branches of his people would give Western Europe a counterpoise to the Germany of tomorrow. A good map accompanies the volume.

In *The Only Possible Peace*, Dr. Frederick Howe discusses such interesting subjects as "The Economic Penetration into Turkey," "The Berlin-Bagdad Railway," "The Rebirth of the Mediterranean" and the "Pax Economica." It is the author's contention that economic forces have not been mainly responsible for Europe's overwhelming catastrophes in the past, but that they promise trouble in the future unless they are held in firm control. "Economic wars," he asserts, "can only be avoided by freedom, freedom in all the relations of life." Dr. Howe's book is published by Messrs. Charles Scribner's Sons (pp. 265).

A new volume by Lionel Curtis bear the title, *Letters to the People of India on Responsible Government* (London: Macmillan and Co., pp. 211). The chapters contain an explanation and criticism of the British pronouncement of August 20, 1917, with reference to "the gradual development of self-governing institutions in India" and sets forth a detailed plan putting this promise into force.

The Void of War, by Reginald Farrer (Houghton Mifflin Co., pp. 306) is a collection of letters describing scenes on the British, French and Italian fronts during the war. The letters are uncommonly vivid and interesting.

County Government and County Affairs in North Carolina is the title of a 200 page Year Book of the North Carolina Club at the state uni-

versity. It contains 26 chapters on different phases of county government in that state; and is probably the most comprehensive study of rural local government in any state thus far published.

A new edition (the third) of Amos G. Warner's *American Charities* has been published by Messrs. Thomas Y. Crowell Company. This standard work has been of great service to students of social problems during the twenty-five years which have elapsed since its first publication. The present edition contains a biographical preface by Professor George Elliott Howard. The work of revising the book has been skillfully done by Professor Mary Roberts Coolidge of Mills College.

Professor Thomas Reed Powell's paper on "The Logic and Rhetoric of Constitutional Law," which was read at the Philadelphia meeting of the American Political Science Association, has been made available in pamphlet form, reprinted from the *Journal of Philosophy, Psychology and Scientific Methods.* An illuminating article on "Coercing a State to pay a Judgment," based upon the case of Virginia v. West Virginia, was contributed by the same author to the November (1918) number of the *Michigan Law Review.*

A study entitled *The Colonial Citizen of New York City* by Robert Francis Seybolt appears as No. 1 of the University of Wisconsin Studies in the Social Sciences and History.

Professor O. C. Hormell of Bowdoin College has prepared and published an excellent short study of the *Sources of Municipal Revenue in Maine.* It is issued as Number 76 of the Bowdoin College Bulletin.

Vol. IV., No. 1 of the Smith College Studies in History contains a discussion of *The Problem of Administrative Areas* by Harold J Laski. The material relates chiefly to adminstrative areas in Great Britain.

The University of Chicago Press has issued a booklet of fifty-eight pages on *The Nature of the Relationship between Ethics and Economics* by Clarence Edwin Ayres.

RECENT PUBLICATIONS OF POLITICAL INTEREST

BEATRICE OWENS[1]

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AMERICAN GOVERNMENT AND PUBLIC LAW

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